

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a substitute amendment.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 1637

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the

6 “Jumpstart Our Business Strength (JOBS) Act”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
2 wise expressly provided, whenever in this Act an amend-
3 ment or repeal is expressed in terms of an amendment
4 to, or repeal of, a section or other provision, the reference
5 shall be considered to be made to a section or other provi-
6 sion of the Internal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
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Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to United States production activities.

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Sec. 201. 20-year foreign tax credit carryover; 1-year foreign tax credit carryback.

Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.

Sec. 203. Foreign tax credit under alternative minimum tax.

Sec. 204. Recharacterization of overall domestic loss.

Sec. 205. Interest expense allocation rules.

Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

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Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 212. Expansion of de minimis rule under subpart F.

Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Sec. 214. Application of uniform capitalization rules to foreign persons.

Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.

Subtitle C—Additional International Tax Provisions

Sec. 221. Active leasing income from aircraft and vessels.

Sec. 222. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.

- Sec. 223. Look-thru treatment for sales of partnership interests.
- Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.
- Sec. 225. Treatment of income tax base differences.
- Sec. 226. Modification of exceptions under subpart F for active financing.
- Sec. 227. United States property not to include certain assets of controlled foreign corporation.
- Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.
- Sec. 229. Clarification of treatment of certain transfers of intangible property.
- Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.
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TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS

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- Sec. 301. Expansion of qualified small-issue bond program.
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1 **TITLE I—PROVISIONS RELATING**
 2 **TO REPEAL OF EXCLUSION**
 3 **FOR EXTRATERRITORIAL IN-**
 4 **COME**

5 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
 6 **INCOME.**

7 (a) IN GENERAL.—Section 114 is hereby repealed.

8 (b) CONFORMING AMENDMENTS.—

1 (1)(A) Subpart E of part III of subchapter N
2 of chapter 1 (relating to qualifying foreign trade in-
3 come) is hereby repealed.

4 (B) The table of subparts for such part III is
5 amended by striking the item relating to subpart E.

6 (2) The table of sections for part III of sub-
7 chapter B of chapter 1 is amended by striking the
8 item relating to section 114.

9 (3) The second sentence of section
10 56(g)(4)(B)(i) is amended by striking “114 or”.

11 (4) Section 275(a) is amended—

12 (A) by inserting “or” at the end of para-
13 graph (4)(A), by striking “or” at the end of
14 paragraph (4)(B) and inserting a period, and
15 by striking subparagraph (C), and

16 (B) by striking the last sentence.

17 (5) Paragraph (3) of section 864(e) is
18 amended—

19 (A) by striking:

20 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
21 ACCOUNT.—

22 “(A) IN GENERAL.—For purposes of”; and
23 inserting:

24 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
25 ACCOUNT.—For purposes of”, and

1 (B) by striking subparagraph (B).

2 (6) Section 903 is amended by striking “114,
3 164(a),” and inserting “164(a)”.

4 (7) Section 999(e)(1) is amended by striking
5 “941(a)(5),”.

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by
8 this section shall apply to transactions occurring
9 after the date of the enactment of this Act.

10 (2) BINDING CONTRACTS.—The amendments
11 made by this section shall not apply to any trans-
12 action in the ordinary course of a trade or business
13 which occurs pursuant to a binding contract—

14 (A) which is between the taxpayer and a
15 person who is not a related person (as defined
16 in section 943(b)(3) of such Code, as in effect
17 on the day before the date of the enactment of
18 this Act), and

19 (B) which is in effect on September 17,
20 2003, and at all times thereafter.

21 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

22 (1) IN GENERAL.—In the case of a corporation
23 that elected to be treated as a domestic corporation
24 under section 943(e) of the Internal Revenue Code

1 of 1986 (as in effect on the day before the date of
2 the enactment of this Act)—

3 (A) the corporation may, during the 1-year
4 period beginning on the date of the enactment
5 of this Act, revoke such election, effective as of
6 such date of enactment, and

7 (B) if the corporation does revoke such
8 election—

9 (i) such corporation shall be treated
10 as a domestic corporation transferring (as
11 of such date of enactment) all of its prop-
12 erty to a foreign corporation in connection
13 with an exchange described in section 354
14 of such Code, and

15 (ii) no gain or loss shall be recognized
16 on such transfer.

17 (2) EXCEPTION.—Subparagraph (B)(ii) of
18 paragraph (1) shall not apply to gain on any asset
19 held by the revoking corporation if—

20 (A) the basis of such asset is determined
21 in whole or in part by reference to the basis of
22 such asset in the hands of the person from
23 whom the revoking corporation acquired such
24 asset,

1 (B) the asset was acquired by transfer (not
2 as a result of the election under section 943(e)
3 of such Code) occurring on or after the 1st day
4 on which its election under section 943(e) of
5 such Code was effective, and

6 (C) a principal purpose of the acquisition
7 was the reduction or avoidance of tax (other
8 than a reduction in tax under section 114 of
9 such Code, as in effect on the day before the
10 date of the enactment of this Act).

11 (e) GENERAL TRANSITION.—

12 (1) IN GENERAL.—In the case of a taxable year
13 ending after the date of the enactment of this Act
14 and beginning before January 1, 2007, for purposes
15 of chapter 1 of such Code, a current FSC/ETI bene-
16 ficiary shall be allowed a deduction equal to the
17 transition amount determined under this subsection
18 with respect to such beneficiary for such year.

19 (2) CURRENT FSC/ETI BENEFICIARY.—The
20 term “current FSC/ETI beneficiary” means any cor-
21 poration which entered into one or more transactions
22 during its taxable year beginning in calendar year
23 2002 with respect to which FSC/ETI benefits were
24 allowable.

1 (3) TRANSITION AMOUNT.—For purposes of
2 this subsection—

3 (A) IN GENERAL.—The transition amount
4 applicable to any current FSC/ETI beneficiary
5 for any taxable year is the phaseout percentage
6 of the base period amount.

7 (B) PHASEOUT PERCENTAGE.—

8 (i) IN GENERAL.—In the case of a
9 taxpayer using the calendar year as its
10 taxable year, the phaseout percentage shall
11 be determined under the following table:

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

12 (ii) SPECIAL RULE FOR 2004.—The
13 phaseout percentage for 2004 shall be the
14 amount that bears the same ratio to 100
15 percent as the number of days after the
16 date of the enactment of this Act bears to
17 365.

18 (iii) SPECIAL RULE FOR FISCAL YEAR
19 TAXPAYERS.—In the case of a taxpayer
20 not using the calendar year as its taxable
21 year, the phaseout percentage is the
22 weighted average of the phaseout percent-
23 ages determined under the preceding provi-

1 sions of this paragraph with respect to cal-
2 endar years any portion of which is in-
3 cluded in the taxpayer's taxable year. The
4 weighted average shall be determined on
5 the basis of the respective portions of the
6 taxable year in each calendar year.

7 (C) SHORT TAXABLE YEAR.—The Sec-
8 retary shall prescribe guidance for the computa-
9 tion of the transition amount in the case of a
10 short taxable year.

11 (4) BASE PERIOD AMOUNT.—For purposes of
12 this subsection, the base period amount is the aver-
13 age FSC/ETI benefit for the taxpayer's taxable
14 years beginning in calendar years 2000, 2001, and
15 2002.

16 (5) FSC/ETI BENEFIT.—For purposes of this
17 subsection, the term “FSC/ETI benefit” means—

18 (A) amounts excludable from gross income
19 under section 114 of such Code, and

20 (B) the exempt foreign trade income of re-
21 lated foreign sales corporations from property
22 acquired from the taxpayer (determined without
23 regard to section 923(a)(5) of such Code (relat-
24 ing to special rule for military property), as in
25 effect on the day before the date of the enact-

1 ment of the FSC Repeal and Extraterritorial
2 Income Exclusion Act of 2000).

3 In determining the FSC/ETI benefit there shall be
4 excluded any amount attributable to a transaction
5 with respect to which the taxpayer is the lessor un-
6 less the leased property was manufactured or pro-
7 duced in whole or in significant part by the tax-
8 payer.

9 (6) SPECIAL RULE FOR AGRICULTURAL AND
10 HORTICULTURAL COOPERATIVES.—Determinations
11 under this subsection with respect to an organization
12 described in section 943(g)(1) of such Code, as in
13 effect on the day before the date of the enactment
14 of this Act, shall be made at the cooperative level
15 and the purposes of this subsection shall be carried
16 out in a manner similar to section 199(h)(2) of such
17 Code, as added by this Act. Such determinations
18 shall be in accordance with such requirements and
19 procedures as the Secretary may prescribe.

20 (7) CERTAIN RULES TO APPLY.—Rules similar
21 to the rules of section 41(f) of such Code shall apply
22 for purposes of this subsection.

23 (8) COORDINATION WITH BINDING CONTRACT
24 RULE.—The deduction determined under paragraph
25 (1) for any taxable year shall be reduced by the

1 phaseout percentage of any FSC/ETI benefit real-
2 ized for the taxable year by reason of subsection
3 (c)(2) or section 5(c)(1)(B) of the FSC Repeal and
4 Extraterritorial Income Exclusion Act of 2000, ex-
5 cept that for purposes of this paragraph the phase-
6 out percentage for 2004 shall be treated as being
7 equal to 100 percent.

8 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
9 INCLUDES DATE OF ENACTMENT.—In the case of a
10 taxable year which includes the date of the enact-
11 ment of this Act, the deduction allowed under this
12 subsection to any current FSC/ETI beneficiary shall
13 in no event exceed—

14 (A) 100 percent of such beneficiary's base
15 period amount for calendar year 2004, reduced
16 by

17 (B) the FSC/ETI benefit of such bene-
18 ficiary with respect to transactions occurring
19 during the portion of the taxable year ending on
20 the date of the enactment of this Act.

21 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
22 **UTABLE TO UNITED STATES PRODUCTION**
23 **ACTIVITIES.**

24 (a) IN GENERAL.—Part VI of subchapter B of chap-
25 ter 1 (relating to itemized deductions for individuals and

1 corporations) is amended by adding at the end the fol-
 2 lowing new section:

3 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
 4 **TION ACTIVITIES.**

5 “(a) ALLOWANCE OF DEDUCTION.—

6 “(1) IN GENERAL.—There shall be allowed as a
 7 deduction an amount equal to 9 percent of the quali-
 8 fied production activities income of the taxpayer for
 9 the taxable year.

10 “(2) PHASEIN.—In the case of taxable years
 11 beginning in 2004, 2005, 2006, 2007, or 2008,
 12 paragraph (1) shall be applied by substituting for
 13 the percentage contained therein the transition per-
 14 centage determined under the following table:

“Taxable years beginning in:	The transition percentage is:
2004, 2005, or 2006	5
2007	6
2008	7.

15 “(b) DEDUCTION LIMITED TO WAGES PAID.—

16 “(1) IN GENERAL.—The amount of the deduc-
 17 tion allowable under subsection (a) for any taxable
 18 year shall not exceed 50 percent of the W-2 wages
 19 of the employer for the taxable year.

20 “(2) W-2 WAGES.—For purposes of paragraph
 21 (1), the term ‘W-2 wages’ means the sum of the ag-
 22 gregate amounts the taxpayer is required to include
 23 on statements under paragraphs (3) and (8) of sec-

1 tion 6051(a) with respect to employment of employ-
2 ees of the taxpayer during the taxpayer's taxable
3 year.

4 “(3) SPECIAL RULES.—

5 “(A) PASS-THRU ENTITIES.—In the case
6 of an S corporation, partnership, estate or
7 trust, or other pass-thru entity, the limitation
8 under this subsection shall apply at the entity
9 level. The preceding sentence shall not apply to
10 any entity all of the ownership interests of
11 which are held directly or indirectly by members
12 of the same expanded affiliated group.

13 “(B) ACQUISITIONS AND DISPOSITIONS.—
14 The Secretary shall provide for the application
15 of this subsection in cases where the taxpayer
16 acquires, or disposes of, the major portion of a
17 trade or business or the major portion of a sep-
18 arate unit of a trade or business during the tax-
19 able year.

20 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-
21 COME.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘qualified produc-
23 tion activities income’ means an amount equal to the
24 portion of the modified taxable income of the tax-

1 payer which is attributable to domestic production
2 activities.

3 “(2) REDUCTION FOR TAXABLE YEARS BEGIN-
4 NING BEFORE 2013.—The amount otherwise deter-
5 mined under paragraph (1) (the ‘unreduced
6 amount’) shall not exceed—

7 “(A) in the case of taxable years beginning
8 before 2010, the product of the unreduced
9 amount and the domestic/worldwide fraction,
10 and

11 “(B) in the case of taxable years beginning
12 in 2010, 2011, or 2012, an amount equal to the
13 sum of—

14 “(i) the product of the unreduced
15 amount and the domestic/worldwide frac-
16 tion, plus

17 “(ii) the applicable percentage of an
18 amount equal to the unreduced amount
19 minus the amount determined under clause
20 (i).

21 For purposes of subparagraph (B)(ii), the applicable
22 percentage is 25 percent for 2010, 50 percent for
23 2011, and 75 percent for 2012.

1 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
2 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
3 of this section—

4 “(1) IN GENERAL.—The portion of the modified
5 taxable income which is attributable to domestic pro-
6 duction activities is so much of the modified taxable
7 income for the taxable year as does not exceed—

8 “(A) the taxpayer’s domestic production
9 gross receipts for such taxable year, reduced by

10 “(B) the sum of—

11 “(i) the costs of goods sold that are
12 allocable to such receipts,

13 “(ii) other deductions, expenses, or
14 losses directly allocable to such receipts,
15 and

16 “(iii) a proper share of other deduc-
17 tions, expenses, and losses that are not di-
18 rectly allocable to such receipts or another
19 class of income.

20 “(2) ALLOCATION METHOD.—The Secretary
21 shall prescribe rules for the proper allocation of
22 items of income, deduction, expense, and loss for
23 purposes of determining income attributable to do-
24 mestic production activities.

1 “(3) SPECIAL RULES FOR DETERMINING
2 COSTS.—

3 “(A) IN GENERAL.—For purposes of deter-
4 mining costs under clause (i) of paragraph
5 (1)(B), any item or service brought into the
6 United States shall be treated as acquired by
7 purchase, and its cost shall be treated as not
8 less than its fair market value immediately
9 after it entered the United States. A similar
10 rule shall apply in determining the adjusted
11 basis of leased or rented property where the
12 lease or rental gives rise to domestic production
13 gross receipts.

14 “(B) EXPORTS FOR FURTHER MANUFAC-
15 TURE.—In the case of any property described
16 in subparagraph (A) that had been exported by
17 the taxpayer for further manufacture, the in-
18 crease in cost or adjusted basis under subpara-
19 graph (A) shall not exceed the difference be-
20 tween the value of the property when exported
21 and the value of the property when brought
22 back into the United States after the further
23 manufacture.

24 “(4) MODIFIED TAXABLE INCOME.—The term
25 ‘modified taxable income’ means taxable income

1 computed without regard to the deduction allowable
2 under this section.

3 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—

4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘domestic produc-
6 tion gross receipts’ means the gross receipts of the
7 taxpayer which are derived from—

8 “(A) any sale, exchange, or other disposi-
9 tion of, or

10 “(B) any lease, rental, or license of,
11 qualifying production property which was manufac-
12 tured, produced, grown, or extracted in whole or in
13 significant part by the taxpayer within the United
14 States.

15 “(2) SPECIAL RULES FOR CERTAIN PROP-
16 ERTY.—In the case of any qualifying production
17 property described in subsection (f)(1)(C)—

18 “(A) such property shall be treated for
19 purposes of paragraph (1) as produced in sig-
20 nificant part by the taxpayer within the United
21 States if more than 50 percent of the aggregate
22 development and production costs are incurred
23 by the taxpayer within the United States, and

24 “(B) if a taxpayer acquires such property
25 before such property begins to generate sub-

1 stantial gross receipts, any development or pro-
2 duction costs incurred before the acquisition
3 shall be treated as incurred by the taxpayer for
4 purposes of subparagraph (A) and paragraph
5 (1).

6 “(f) QUALIFYING PRODUCTION PROPERTY.—For
7 purposes of this section—

8 “(1) IN GENERAL.—Except as otherwise pro-
9 vided in this paragraph, the term ‘qualifying produc-
10 tion property’ means—

11 “(A) any tangible personal property,

12 “(B) any computer software, and

13 “(C) any property described in section
14 168(f) (3) or (4), including any underlying
15 copyright or trademark.

16 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
17 TION PROPERTY.—The term ‘qualifying production
18 property’ shall not include—

19 “(A) consumable property that is sold,
20 leased, or licensed by the taxpayer as an inte-
21 gral part of the provision of services,

22 “(B) oil or gas,

23 “(C) electricity,

24 “(D) water supplied by pipeline to the con-
25 sumer,

1 “(E) utility services, or

2 “(F) any film, tape, recording, book, mag-
3 azine, newspaper, or similar property the mar-
4 ket for which is primarily topical or otherwise
5 essentially transitory in nature.

6 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
7 poses of this section—

8 “(1) IN GENERAL.—The term ‘domestic/world-
9 wide fraction’ means a fraction (not greater than
10 1)—

11 “(A) the numerator of which is the value
12 of the domestic production of the taxpayer, and

13 “(B) the denominator of which is the value
14 of the worldwide production of the taxpayer.

15 “(2) VALUE OF DOMESTIC PRODUCTION.—The
16 value of domestic production is the excess (if any)
17 of—

18 “(A) the domestic production gross re-
19 ceipts, over

20 “(B) the cost of purchased inputs allocable
21 to such receipts that are deductible under this
22 chapter for the taxable year.

23 “(3) PURCHASED INPUTS.—

1 “(A) IN GENERAL.—Purchased inputs are
2 any of the following items acquired by pur-
3 chase:

4 “(i) Services (other than services of
5 employees) used in manufacture, produc-
6 tion, growth, or extraction activities.

7 “(ii) Items consumed in connection
8 with such activities.

9 “(iii) Items incorporated as part of
10 the property being manufactured, pro-
11 duced, grown, or extracted.

12 “(B) SPECIAL RULE.—Rules similar to the
13 rules of subsection (d)(3) shall apply for pur-
14 poses of this subsection.

15 “(4) VALUE OF WORLDWIDE PRODUCTION.—

16 “(A) IN GENERAL.—The value of world-
17 wide production shall be determined under the
18 principles of paragraph (2), except that—

19 “(i) worldwide production gross re-
20 ceipts shall be taken into account, and

21 “(ii) paragraph (3)(B) shall not apply.

22 “(B) WORLDWIDE PRODUCTION GROSS RE-
23 CEIPTS.—The worldwide production gross re-
24 ceipts is the amount that would be determined
25 under subsection (e) if such subsection were ap-

1 plied without any reference to the United
2 States.

3 “(h) DEFINITIONS AND SPECIAL RULES.—

4 “(1) APPLICATION OF SECTION TO PASS-THRU
5 ENTITIES.—In the case of an S corporation, partner-
6 ship, estate or trust, or other pass-thru entity—

7 “(A) subject to the provisions of paragraph
8 (2) and subsection (b)(3)(A), this section shall
9 be applied at the shareholder, partner, or simi-
10 lar level, and

11 “(B) the Secretary shall prescribe rules for
12 the application of this section, including rules
13 relating to—

14 “(i) restrictions on the allocation of
15 the deduction to taxpayers at the partner
16 or similar level, and

17 “(ii) additional reporting require-
18 ments.

19 “(2) PATRONS OF AGRICULTURAL AND HORTI-
20 CULTURAL COOPERATIVES.—

21 “(A) IN GENERAL.—If any amount de-
22 scribed in paragraph (1) or (3) of section 1385
23 (a)—

1 “(i) is received by a person from an
2 organization to which part I of subchapter
3 T applies which is engaged—

4 “(I) in the manufacturing, pro-
5 duction, growth, or extraction in
6 whole or significant part of any agri-
7 cultural or horticultural product, or

8 “(II) in the marketing of agricul-
9 tural or horticultural products, and

10 “(ii) is allocable to the portion of the
11 qualified production activities income of
12 the organization which, but for this para-
13 graph, would be deductible under sub-
14 section (a) by the organization and is des-
15 ignated as such by the organization in a
16 written notice mailed to its patrons during
17 the payment period described in section
18 1382(d),

19 then such person shall be allowed a deduction
20 under subsection (a) with respect to such
21 amount. The taxable income of the organization
22 shall not be reduced under section 1382 by rea-
23 son of any amount to which the preceding sen-
24 tence applies.

1 “(B) SPECIAL RULES.—For purposes of
2 applying subparagraph (A), in determining the
3 qualified production activities income of the or-
4 ganization under this section—

5 “(i) there shall not be taken into ac-
6 count in computing the organization’s
7 modified taxable income any deduction al-
8 lowable under subsection (b) or (c) of sec-
9 tion 1382 (relating to patronage dividends,
10 per-unit retain allocations, and nonpatron-
11 age distributions), and

12 “(ii) in the case of an organization de-
13 scribed in subparagraph (A)(i)(II), the or-
14 ganization shall be treated as having man-
15 ufactured, produced, grown, or extracted in
16 whole or significant part any qualifying
17 production property marketed by the orga-
18 nization which its patrons have so manu-
19 factured, produced, grown, or extracted.

20 “(3) SPECIAL RULE FOR AFFILIATED
21 GROUPS.—

22 “(A) IN GENERAL.—All members of an ex-
23 panded affiliated group shall be treated as a
24 single corporation for purposes of this section.

1 “(B) EXPANDED AFFILIATED GROUP.—

2 The term ‘expanded affiliated group’ means an
3 affiliated group as defined in section 1504(a),
4 determined—

5 “(i) by substituting ‘50 percent’ for
6 ‘80 percent’ each place it appears, and

7 “(ii) without regard to paragraphs (2)
8 and (4) of section 1504(b).

9 For purposes of determining the domestic/
10 worldwide fraction under subsection (g), clause
11 (ii) shall be applied by also disregarding para-
12 graphs (3) and (8) of section 1504(b).

13 “(4) COORDINATION WITH MINIMUM TAX.—The
14 deduction under this section shall be allowed for
15 purposes of the tax imposed by section 55; except
16 that for purposes of section 55, alternative minimum
17 taxable income shall be taken into account in deter-
18 mining the deduction under this section.

19 “(5) ORDERING RULE.—The amount of any
20 other deduction allowable under this chapter shall be
21 determined as if this section had not been enacted.

22 “(6) TRADE OR BUSINESS REQUIREMENT.—
23 This section shall be applied by only taking into ac-
24 count items which are attributable to the actual con-
25 duct of a trade or business.

1 “(7) POSSESSIONS, ETC.—

2 “(A) IN GENERAL.—For purposes of sub-
3 sections (d) and (e), the term ‘United States’
4 includes the Commonwealth of Puerto Rico,
5 Guam, American Samoa, the Commonwealth of
6 the Northern Mariana Islands, and the Virgin
7 Islands of the United States.

8 “(B) SPECIAL RULES FOR APPLYING WAGE
9 LIMITATION.—For purposes of applying the
10 limitation under subsection (b) for any taxable
11 year—

12 “(i) the determination of W–2 wages
13 of a taxpayer shall be made without regard
14 to any exclusion under section 3401(a)(8)
15 for remuneration paid for services per-
16 formed in a jurisdiction described in sub-
17 paragraph (A), and

18 “(ii) in determining the amount of
19 any credit allowable under section 30A or
20 936 for the taxable year, there shall not be
21 taken into account any wages which are
22 taken into account in applying such limita-
23 tion.

24 “(8) COORDINATION WITH TRANSITION
25 RULES.—For purposes of this section—

1 “(A) domestic production gross receipts
2 shall not include gross receipts from any trans-
3 action if the binding contract transition relief of
4 section 101(c)(2) of the Jumpstart Our Busi-
5 ness Strength (JOBS) Act applies to such
6 transaction, and

7 “(B) any deduction allowed under section
8 101(e) of such Act shall be disregarded in de-
9 termining the portion of the taxable income
10 which is attributable to domestic production
11 gross receipts.

12 “(9) SEPARATE APPLICATION TO FILMS AND
13 VIDEOTAPE.—In the case of qualifying production
14 property described in section 168(f)(3), this section
15 shall be applied separately to qualified production
16 activities income of the taxpayer allocable to each of
17 the following markets with respect to such property:

18 “(A) Theatrical.

19 “(B) Broadcast television (including cable,
20 foreign, pay-per-view, and syndication).

21 “(C) Home video.”.

22 (b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to
23 disallowance of items not deductible in computing earnings
24 and profits) is amended by adding at the end the following
25 new clause:

1 “(v) DEDUCTION FOR DOMESTIC PRO-
2 DUCTION.—Clause (i) shall not apply to
3 any amount allowable as a deduction under
4 section 199.”.

5 (c) CLERICAL AMENDMENT.—The table of sections
6 for part VI of subchapter B of chapter 1 is amended by
7 adding at the end the following new item:

 “Sec. 199. Income attributable to domestic production activi-
 ties.”.

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by
10 this section shall apply to taxable years ending after
11 the date of the enactment of this Act.

12 (2) APPLICATION OF SECTION 15.—Section 15
13 of the Internal Revenue Code of 1986 shall apply to
14 the amendments made by this section as if they were
15 changes in a rate of tax.

16 **TITLE II—INTERNATIONAL TAX**
17 **PROVISIONS**

18 **Subtitle A—International Tax**
19 **Reform**

20 **SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-**
21 **YEAR FOREIGN TAX CREDIT CARRYBACK.**

22 (a) GENERAL RULE.—Section 904(c) (relating to
23 carryback and carryover of excess tax paid) is amended—

1 (1) by striking “in the second preceding taxable
2 year,” and

3 (2) by striking “, and in the first, second, third,
4 fourth, or fifth” and inserting “and in any of the
5 first 20”.

6 (b) EXCESS EXTRACTION TAXES.—Paragraph (1) of
7 section 907(f) is amended—

8 (1) by striking “in the second preceding taxable
9 year,”

10 (2) by striking “, and in the first, second, third,
11 fourth, or fifth” and inserting “and in any of the
12 first 20”, and

13 (3) by striking the last sentence.

14 (c) EFFECTIVE DATE.—

15 (1) CARRYBACK.—The amendments made by
16 subsections (a)(1) and (b)(1) shall apply to excess
17 foreign taxes arising in taxable years beginning after
18 the date of the enactment of this Act.

19 (2) CARRYOVER.—The amendments made by
20 subsections (a)(2) and (b)(2) shall apply to excess
21 foreign taxes which (without regard to the amend-
22 ments made by this section) may be carried to any
23 taxable year ending after the date of the enactment
24 of this Act.

1 **SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
2 **FROM NONCONTROLLED SECTION 902 COR-**
3 **PORATIONS.**

4 (a) IN GENERAL.—Section 904(d)(4) (relating to
5 look-thru rules apply to dividends from noncontrolled sec-
6 tion 902 corporations) is amended to read as follows:

7 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
8 NONCONTROLLED SECTION 902 CORPORATIONS.—

9 “(A) IN GENERAL.—For purposes of this
10 subsection, any dividend from a noncontrolled
11 section 902 corporation with respect to the tax-
12 payer shall be treated as income described in a
13 subparagraph of paragraph (1) in proportion to
14 the ratio of—

15 “(i) the portion of earnings and prof-
16 its attributable to income described in such
17 subparagraph, to

18 “(ii) the total amount of earnings and
19 profits.

20 “(B) EARNINGS AND PROFITS OF CON-
21 TROLLED FOREIGN CORPORATIONS.—In the
22 case of any distribution from a controlled for-
23 eign corporation to a United States share-
24 holder, rules similar to the rules of subpara-
25 graph (A) shall apply in determining the extent
26 to which earnings and profits of the controlled

1 foreign corporation which are attributable to
2 dividends received from a noncontrolled section
3 902 corporation may be treated as income in a
4 separate category.

5 “(C) SPECIAL RULES.—For purposes of
6 this paragraph—

7 “(i) EARNINGS AND PROFITS.—

8 “(I) IN GENERAL.—The rules of
9 section 316 shall apply.

10 “(II) REGULATIONS.—The Sec-
11 retary may prescribe regulations re-
12 garding the treatment of distributions
13 out of earnings and profits for periods
14 before the taxpayer’s acquisition of
15 the stock to which the distributions
16 relate.

17 “(ii) INADEQUATE SUBSTAN-
18 TIATION.—If the Secretary determines that
19 the proper subparagraph of paragraph (1)
20 in which a dividend is described has not
21 been substantiated, such dividend shall be
22 treated as income described in paragraph
23 (1)(A).

24 “(iii) COORDINATION WITH HIGH-
25 TAXED INCOME PROVISIONS.—Rules simi-

1 lar to the rules of paragraph (3)(F) shall
2 apply for purposes of this paragraph.

3 “(iv) LOOK-THRU WITH RESPECT TO
4 CARRYOVER OF CREDIT.—Rules similar to
5 subparagraph (A) also shall apply to any
6 carryforward under subsection (c) from a
7 taxable year beginning before January 1,
8 2003, of tax allocable to a dividend from a
9 noncontrolled section 902 corporation with
10 respect to the taxpayer. The Secretary may
11 by regulations provide for the allocation of
12 any carryback of tax allocable to a divi-
13 dend from a noncontrolled section 902 cor-
14 poration to such a taxable year for pur-
15 poses of allocating such dividend among
16 the separate categories in effect for such
17 taxable year.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Subparagraph (E) of section 904(d)(1) is
20 hereby repealed.

21 (2) Section 904(d)(2)(C)(iii) is amended by
22 adding “and” at the end of subclause (I), by striking
23 subclause (II), and by redesignating subclause (III)
24 as subclause (II).

1 (3) The last sentence of section 904(d)(2)(D) is
2 amended to read as follows: “Such term does not in-
3 clude any financial services income.”.

4 (4) Section 904(d)(2)(E) is amended—

5 (A) by inserting “or (4)” after “paragraph
6 (3)” in clause (i), and

7 (B) by striking clauses (ii) and (iv) and by
8 redesignating clause (iii) as clause (ii).

9 (5) Section 904(d)(3)(F) is amended by strik-
10 ing “(D), or (E)” and inserting “or (D)”.

11 (6) Section 864(d)(5)(A)(i) is amended by
12 striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2002.

16 **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
17 **IMUM TAX.**

18 (a) IN GENERAL.—

19 (1) Subsection (a) of section 59 is amended by
20 striking paragraph (2) and by redesignating para-
21 graphs (3) and (4) as paragraphs (2) and (3), re-
22 spectively.

23 (2) Section 53(d)(1)(B)(i)(II) is amended by
24 striking “and if section 59(a)(2) did not apply”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2004.

4 **SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC**
5 **LOSS.**

6 (a) GENERAL RULE.—Section 904 is amended by re-
7 designating subsections (g), (h), (i), (j), and (k) as sub-
8 sections (h), (i), (j), (k), and (l) respectively, and by in-
9 serting after subsection (f) the following new subsection:

10 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC
11 LOSS.—

12 “(1) GENERAL RULE.—For purposes of this
13 subpart and section 936, in the case of any taxpayer
14 who sustains an overall domestic loss for any taxable
15 year beginning after December 31, 2006, that por-
16 tion of the taxpayer’s taxable income from sources
17 within the United States for each succeeding taxable
18 year which is equal to the lesser of—

19 “(A) the amount of such loss (to the extent
20 not used under this paragraph in prior taxable
21 years), or

22 “(B) 50 percent of the taxpayer’s taxable
23 income from sources within the United States
24 for such succeeding taxable year,

1 shall be treated as income from sources without the
2 United States (and not as income from sources with-
3 in the United States).

4 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
5 purposes of this subsection—

6 “(A) IN GENERAL.—The term ‘overall do-
7 mestic loss’ means any domestic loss to the ex-
8 tent such loss offsets taxable income from
9 sources without the United States for the tax-
10 able year or for any preceding taxable year by
11 reason of a carryback. For purposes of the pre-
12 ceding sentence, the term ‘domestic loss’ means
13 the amount by which the gross income for the
14 taxable year from sources within the United
15 States is exceeded by the sum of the deductions
16 properly apportioned or allocated thereto (deter-
17 mined without regard to any carryback from a
18 subsequent taxable year).

19 “(B) TAXPAYER MUST HAVE ELECTED
20 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—
21 The term ‘overall domestic loss’ shall not in-
22 clude any loss for any taxable year unless the
23 taxpayer chose the benefits of this subpart for
24 such taxable year.

1 “(3) CHARACTERIZATION OF SUBSEQUENT IN-
2 COME.—

3 “(A) IN GENERAL.—Any income from
4 sources within the United States that is treated
5 as income from sources without the United
6 States under paragraph (1) shall be allocated
7 among and increase the income categories in
8 proportion to the loss from sources within the
9 United States previously allocated to those in-
10 come categories.

11 “(B) INCOME CATEGORY.—For purposes of
12 this paragraph, the term ‘income category’ has
13 the meaning given such term by subsection
14 (f)(5)(E)(i).

15 “(4) COORDINATION WITH SUBSECTION (f).—
16 The Secretary shall prescribe such regulations as
17 may be necessary to coordinate the provisions of this
18 subsection with the provisions of subsection (f).”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 535(d)(2) is amended by striking
21 “section 904(g)(6)” and inserting “section
22 904(h)(6)”.

23 (2) Subparagraph (A) of section 936(a)(2) is
24 amended by striking “section 904(f)” and inserting
25 “subsections (f) and (g) of section 904”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to losses for taxable years begin-
3 ning after December 31, 2006.

4 **SEC. 205. INTEREST EXPENSE ALLOCATION RULES.**

5 (a) ELECTION TO ALLOCATE ON WORLDWIDE
6 BASIS.—Section 864 is amended by redesignating sub-
7 section (f) as subsection (g) and by inserting after sub-
8 section (e) the following new subsection:

9 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
10 WORLDWIDE BASIS.—For purposes of this subchapter, at
11 the election of the worldwide affiliated group—

12 “(1) ALLOCATION AND APPORTIONMENT OF IN-
13 TEREST EXPENSE.—

14 “(A) IN GENERAL.—The taxable income of
15 each domestic corporation which is a member of
16 a worldwide affiliated group shall be determined
17 by allocating and apportioning interest expense
18 of each member as if all members of such group
19 were a single corporation.

20 “(B) TREATMENT OF WORLDWIDE AFFILI-
21 ATED GROUP.—The taxable income of the do-
22 mestic members of a worldwide affiliated group
23 from sources outside the United States shall be
24 determined by allocating and apportioning the
25 interest expense of such domestic members to

1 such income in an amount equal to the excess
2 (if any) of—

3 “(i) the total interest expense of the
4 worldwide affiliated group multiplied by
5 the ratio which the foreign assets of the
6 worldwide affiliated group bears to all the
7 assets of the worldwide affiliated group,
8 over

9 “(ii) the interest expense of all foreign
10 corporations which are members of the
11 worldwide affiliated group to the extent
12 such interest expense of such foreign cor-
13 porations would have been allocated and
14 apportioned to foreign source income if
15 this subsection were applied to a group
16 consisting of all the foreign corporations in
17 such worldwide affiliated group.

18 “(C) WORLDWIDE AFFILIATED GROUP.—
19 For purposes of this paragraph, the term
20 ‘worldwide affiliated group’ means a group con-
21 sisting of—

22 “(i) the includible members of an af-
23 filiated group (as defined in section
24 1504(a), determined without regard to

1 paragraphs (2) and (4) of section
2 1504(b)), and

3 “(ii) all controlled foreign corpora-
4 tions in which such members in the aggre-
5 gate meet the ownership requirements of
6 section 1504(a)(2) either directly or indi-
7 rectly through applying paragraph (2) of
8 section 958(a) or through applying rules
9 similar to the rules of such paragraph to
10 stock owned directly or indirectly by do-
11 mestic partnerships, trusts, or estates.

12 “(2) ALLOCATION AND APPORTIONMENT OF
13 OTHER EXPENSES.—Expenses other than interest
14 which are not directly allocable or apportioned to
15 any specific income producing activity shall be allo-
16 cated and apportioned as if all members of the affili-
17 ated group were a single corporation. For purposes
18 of the preceding sentence, the term ‘affiliated group’
19 has the meaning given such term by section 1504
20 (determined without regard to paragraph (4) of sec-
21 tion 1504(b)).

22 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
23 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
24 OWNED CORPORATIONS.—The rules of paragraphs
25 (3) and (4) of subsection (e) shall apply for purposes

1 of this subsection, except that paragraph (4) shall be
2 applied on a worldwide affiliated group basis.

3 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
4 STITUTIONS.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1), any corporation described in sub-
7 paragraph (B) shall be treated as an includible
8 corporation for purposes of section 1504 only
9 for purposes of applying this subsection sepa-
10 rately to corporations so described.

11 “(B) DESCRIPTION.—A corporation is de-
12 scribed in this subparagraph if—

13 “(i) such corporation is a financial in-
14 stitution described in section 581 or 591,

15 “(ii) the business of such financial in-
16 stitution is predominantly with persons
17 other than related persons (within the
18 meaning of subsection (d)(4)) or their cus-
19 tomers, and

20 “(iii) such financial institution is re-
21 quired by State or Federal law to be oper-
22 ated separately from any other entity
23 which is not such an institution.

1 “(C) TREATMENT OF BANK AND FINAN-
2 CIAL HOLDING COMPANIES.—To the extent pro-
3 vided in regulations—

4 “(i) a bank holding company (within
5 the meaning of section 2(a) of the Bank
6 Holding Company Act of 1956 (12 U.S.C.
7 1841(a)),

8 “(ii) a financial holding company
9 (within the meaning of section 2(p) of the
10 Bank Holding Company Act of 1956 (12
11 U.S.C. 1841(p)), and

12 “(iii) any subsidiary of a financial in-
13 stitution described in section 581 or 591,
14 or of any such bank or financial holding
15 company, if such subsidiary is predomi-
16 nantly engaged (directly or indirectly) in
17 the active conduct of a banking, financing,
18 or similar business,

19 shall be treated as a corporation described in
20 subparagraph (B).

21 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
22 TUTION GROUP OF WORLDWIDE GROUP.—

23 “(A) IN GENERAL.—If a worldwide affili-
24 ated group elects the application of this sub-
25 section, all financial corporations which—

1 “(i) are members of such worldwide
2 affiliated group, but

3 “(ii) are not corporations described in
4 paragraph (4)(B),

5 shall be treated as described in paragraph
6 (4)(B) for purposes of applying paragraph
7 (4)(A). This subsection (other than this para-
8 graph) shall apply to any such group in the
9 same manner as this subsection (other than this
10 paragraph) applies to the pre-election worldwide
11 affiliated group of which such group is a part.

12 “(B) FINANCIAL CORPORATION.—For pur-
13 poses of this paragraph, the term ‘financial cor-
14 poration’ means any corporation if at least 80
15 percent of its gross income is income described
16 in section 904(d)(2)(C)(ii) and the regulations
17 thereunder which is derived from transactions
18 with persons who are not related (within the
19 meaning of section 267(b) or 707(b)(1)) to the
20 corporation. For purposes of the preceding sen-
21 tence, there shall be disregarded any item of in-
22 come or gain from a transaction or series of
23 transactions a principal purpose of which is the
24 qualification of any corporation as a financial
25 corporation.

1 “(C) ANTIABUSE RULES.—In the case of a
2 corporation which is a member of an electing fi-
3 nancial institution group, to the extent that
4 such corporation—

5 “(i) distributes dividends or makes
6 other distributions with respect to its stock
7 after the date of the enactment of this
8 paragraph to any member of the pre-elec-
9 tion worldwide affiliated group (other than
10 to a member of the electing financial insti-
11 tution group) in excess of the greater of—

12 “(I) its average annual dividend
13 (expressed as a percentage of current
14 earnings and profits) during the 5-
15 taxable-year period ending with the
16 taxable year preceding the taxable
17 year, or

18 “(II) 25 percent of its average
19 annual earnings and profits for such
20 5-taxable-year period, or

21 “(ii) deals with any person in any
22 manner not clearly reflecting the income of
23 the corporation (as determined under prin-
24 ciples similar to the principles of section
25 482),

1 an amount of indebtedness of the electing fi-
2 nancial institution group equal to the excess
3 distribution or the understatement or overstate-
4 ment of income, as the case may be, shall be re-
5 characterized (for the taxable year and subse-
6 quent taxable years) for purposes of this para-
7 graph as indebtedness of the worldwide affili-
8 ated group (excluding the electing financial in-
9 stitution group). If a corporation has not been
10 in existence for 5 taxable years, this subpara-
11 graph shall be applied with respect to the pe-
12 riod it was in existence.

13 “(D) ELECTION.—An election under this
14 paragraph with respect to any financial institu-
15 tion group may be made only by the common
16 parent of the pre-election worldwide affiliated
17 group and may be made only for the first tax-
18 able year beginning after December 31, 2008,
19 in which such affiliated group includes 1 or
20 more financial corporations. Such an election,
21 once made, shall apply to all financial corpora-
22 tions which are members of the electing finan-
23 cial institution group for such taxable year and
24 all subsequent years unless revoked with the
25 consent of the Secretary.

1 “(E) DEFINITIONS RELATING TO
2 GROUPS.—For purposes of this paragraph—

3 “(i) PRE-ELECTION WORLDWIDE AF-
4 FILLATED GROUP.—The term ‘pre-election
5 worldwide affiliated group’ means, with re-
6 spect to a corporation, the worldwide affili-
7 ated group of which such corporation
8 would (but for an election under this para-
9 graph) be a member for purposes of apply-
10 ing paragraph (1).

11 “(ii) ELECTING FINANCIAL INSTITU-
12 TION GROUP.—The term ‘electing financial
13 institution group’ means the group of cor-
14 porations to which this subsection applies
15 separately by reason of the application of
16 paragraph (4)(A) and which includes fi-
17 nancial corporations by reason of an elec-
18 tion under subparagraph (A).

19 “(F) REGULATIONS.—The Secretary shall
20 prescribe such regulations as may be appro-
21 priate to carry out this subsection, including
22 regulations—

23 “(i) providing for the direct allocation
24 of interest expense in other circumstances
25 where such allocation would be appropriate

1 to carry out the purposes of this sub-
2 section,

3 “(ii) preventing assets or interest ex-
4 pense from being taken into account more
5 than once, and

6 “(iii) dealing with changes in mem-
7 bers of any group (through acquisitions or
8 otherwise) treated under this paragraph as
9 an affiliated group for purposes of this
10 subsection.

11 “(6) ELECTION.—An election to have this sub-
12 section apply with respect to any worldwide affiliated
13 group may be made only by the common parent of
14 the domestic affiliated group referred to in para-
15 graph (1)(C) and may be made only for the first
16 taxable year beginning after December 31, 2008, in
17 which a worldwide affiliated group exists which in-
18 cludes such affiliated group and at least 1 foreign
19 corporation. Such an election, once made, shall apply
20 to such common parent and all other corporations
21 which are members of such worldwide affiliated
22 group for such taxable year and all subsequent years
23 unless revoked with the consent of the Secretary.”.

24 (b) EXPANSION OF REGULATORY AUTHORITY.—
25 Paragraph (7) of section 864(e) is amended—

1 only if substantially all of the controlled
2 foreign corporation's commodities are
3 property described in paragraph (1), (2),
4 or (8) of section 1221(a), or”.

5 (b) DEFINITION AND SPECIAL RULES.—Subsection
6 (c) of section 954 is amended by adding after paragraph
7 (3) the following new paragraph:

8 “(4) DEFINITION AND SPECIAL RULES RELAT-
9 ING TO COMMODITY TRANSACTIONS.—

10 “(A) COMMODITY HEDGING TRANS-
11 ACTIONS.—For purposes of paragraph
12 (1)(C)(i), the term ‘commodity hedging trans-
13 action’ means any transaction with respect to a
14 commodity if such transaction—

15 “(i) is a hedging transaction as de-
16 fined in section 1221(b)(2), determined—

17 “(I) without regard to subpara-
18 graph (A)(ii) thereof,

19 “(II) by applying subparagraph
20 (A)(i) thereof by substituting ‘ordi-
21 nary property or property described in
22 section 1231(b)’ for ‘ordinary prop-
23 erty’, and

1 “(III) by substituting ‘controlled
2 foreign corporation’ for ‘taxpayer’
3 each place it appears, and

4 “(ii) is clearly identified as such in ac-
5 cordance with section 1221(a)(7).

6 “(B) TREATMENT OF DEALER ACTIVITIES
7 UNDER PARAGRAPH (1)(C).—Commodities with
8 respect to which gains and losses are not taken
9 into account under paragraph (2)(C) in com-
10 puting a controlled foreign corporation’s foreign
11 personal holding company income shall not be
12 taken into account in applying the substantially
13 all test under paragraph (1)(C)(ii) to such cor-
14 poration.

15 “(C) REGULATIONS.—The Secretary shall
16 prescribe such regulations as are appropriate to
17 carry out the purposes of paragraph (1)(C) in
18 the case of transactions involving related par-
19 ties.”.

20 (e) MODIFICATION OF EXCEPTION FOR DEALERS.—
21 Clause (i) of section 954(e)(2)(C) is amended by inserting
22 “and transactions involving physical settlement” after
23 “(including hedging transactions”).

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transactions entered into after
3 December 31, 2004.

4 **Subtitle B—International Tax**
5 **Simplification**

6 **SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
7 **PANY RULES AND FOREIGN INVESTMENT**
8 **COMPANY RULES.**

9 (a) GENERAL RULE.—The following provisions are
10 hereby repealed:

11 (1) Part III of subchapter G of chapter 1 (re-
12 lating to foreign personal holding companies).

13 (2) Section 1246 (relating to gain on foreign in-
14 vestment company stock).

15 (3) Section 1247 (relating to election by foreign
16 investment companies to distribute income cur-
17 rently).

18 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM
19 PERSONAL HOLDING COMPANY RULES.—

20 (1) IN GENERAL.—Subsection (c) of section
21 542 (relating to exceptions) is amended—

22 (A) by striking paragraph (5) and insert-
23 ing the following:

24 “(5) a foreign corporation,”

1 (B) by striking paragraphs (7) and (10)
2 and by redesignating paragraphs (8) and (9) as
3 paragraphs (7) and (8), respectively,

4 (C) by inserting “and” at the end of para-
5 graph (7) (as so redesignated), and

6 (D) by striking “; and” at the end of para-
7 graph (8) (as so redesignated) and inserting a
8 period.

9 (2) TREATMENT OF INCOME FROM PERSONAL
10 SERVICE CONTRACTS.—Paragraph (1) of section
11 954(c) is amended by adding at the end the fol-
12 lowing new subparagraph:

13 “(I) PERSONAL SERVICE CONTRACTS.—

14 “(i) Amounts received under a con-
15 tract under which the corporation is to fur-
16 nish personal services if—

17 “(I) some person other than the
18 corporation has the right to designate
19 (by name or by description) the indi-
20 vidual who is to perform the services,
21 or

22 “(II) the individual who is to per-
23 form the services is designated (by
24 name or by description) in the con-
25 tract, and

1 “(ii) amounts received from the sale
2 or other disposition of such a contract.

3 This subparagraph shall apply with respect to
4 amounts received for services under a particular
5 contract only if at some time during the taxable
6 year 25 percent or more in value of the out-
7 standing stock of the corporation is owned, di-
8 rectly or indirectly, by or for the individual who
9 has performed, is to perform, or may be des-
10 ignated (by name or by description) as the one
11 to perform, such services.”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Section 1(h) is amended—

14 (A) in paragraph (10), by inserting “and”
15 at the end of subparagraph (F), by striking
16 subparagraph (G), and by redesignating sub-
17 paragraph (H) as subparagraph (G), and

18 (B) by striking “a foreign personal holding
19 company (as defined in section 552), a foreign
20 investment company (as defined in section
21 1246(b)), or” in paragraph (11)(C)(iii).

22 (2) Section 163(e)(3)(B), as amended by this
23 Act, is amended by striking “which is a foreign per-
24 sonal holding company (as defined in section 552),
25 a controlled foreign corporation (as defined in sec-

1 tion 957), or” and inserting “which is a controlled
2 foreign corporation (as defined in section 957) or”.

3 (3) Paragraph (2) of section 171(c) is
4 amended—

5 (A) by striking “, or by a foreign personal
6 holding company, as defined in section 552”,
7 and

8 (B) by striking “, or foreign personal hold-
9 ing company”.

10 (4) Paragraph (2) of section 245(a) is amended
11 by striking “foreign personal holding company or”.

12 (5) Section 267(a)(3)(B), as amended by this
13 Act, is amended by striking “to a foreign personal
14 holding company (as defined in section 552), a con-
15 trolled foreign corporation (as defined in section
16 957), or” and inserting “to a controlled foreign cor-
17 poration (as defined in section 957) or”.

18 (6) Section 312 is amended by striking sub-
19 section (j).

20 (7) Subsection (m) of section 312 is amended
21 by striking “, a foreign investment company (within
22 the meaning of section 1246(b)), or a foreign per-
23 sonal holding company (within the meaning of sec-
24 tion 552)”.

1 (8) Subsection (e) of section 443 is amended by
2 striking paragraph (3) and by redesignating para-
3 graphs (4) and (5) as paragraphs (3) and (4), re-
4 spectively.

5 (9) Subparagraph (B) of section 465(e)(7) is
6 amended by adding “or” at the end of clause (i), by
7 striking clause (ii), and by redesignating clause (iii)
8 as clause (ii).

9 (10) Paragraph (1) of section 543(b) is amend-
10 ed by inserting “and” at the end of subparagraph
11 (A), by striking “, and” at the end of subparagraph
12 (B) and inserting a period, and by striking subpara-
13 graph (C).

14 (11) Paragraph (1) of section 562(b) is amend-
15 ed by striking “or a foreign personal holding com-
16 pany described in section 552”.

17 (12) Section 563 is amended—

18 (A) by striking subsection (c),

19 (B) by redesignating subsection (d) as sub-
20 section (c), and

21 (C) by striking “subsection (a), (b), or (c)”
22 in subsection (c) (as so redesignated) and in-
23 serting “subsection (a) or (b)”.

24 (13) Subsection (d) of section 751 is amended
25 by adding “and” at the end of paragraph (2), by

1 striking paragraph (3), by redesignating paragraph
2 (4) as paragraph (3), and by striking “paragraph
3 (1), (2), or (3)” in paragraph (3) (as so redesign-
4 dated) and inserting “paragraph (1) or (2)”.

5 (14) Paragraph (2) of section 864(d) is amend-
6 ed by striking subparagraph (A) and by redesign-
7 ating subparagraphs (B) and (C) as subparagraphs
8 (A) and (B), respectively.

9 (15)(A) Subparagraph (A) of section 898(b)(1)
10 is amended to read as follows:

11 “(A) which is treated as a controlled for-
12 eign corporation for any purpose under subpart
13 F of part III of this subchapter, and”.

14 (B) Subparagraph (B) of section 898(b)(2) is
15 amended by striking “and sections 551(f) and 554,
16 whichever are applicable,”.

17 (C) Paragraph (3) of section 898(b) is amended
18 to read as follows:

19 “(3) UNITED STATES SHAREHOLDER.—The
20 term ‘United States shareholder’ has the meaning
21 given to such term by section 951(b), except that, in
22 the case of a foreign corporation having related per-
23 son insurance income (as defined in section
24 953(c)(2)), the Secretary may treat any person as a
25 United States shareholder for purposes of this sec-

1 tion if such person is treated as a United States
2 shareholder under section 953(c)(1).”.

3 (D) Subsection (c) of section 898 is amended to
4 read as follows:

5 “(c) DETERMINATION OF REQUIRED YEAR.—

6 “(1) IN GENERAL.—The required year is—

7 “(A) the majority U.S. shareholder year,

8 or

9 “(B) if there is no majority U.S. share-
10 holder year, the taxable year prescribed under
11 regulations.

12 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
13 fied foreign corporation may elect, in lieu of the tax-
14 able year under paragraph (1)(A), a taxable year be-
15 ginning 1 month earlier than the majority U.S.
16 shareholder year.

17 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, the term ‘majority U.S. shareholder
20 year’ means the taxable year (if any) which, on
21 each testing day, constituted the taxable year
22 of—

23 “(i) each United States shareholder
24 described in subsection (b)(2)(A), and

1 “(ii) each United States shareholder
2 not described in clause (i) whose stock was
3 treated as owned under subsection
4 (b)(2)(B) by any shareholder described in
5 such clause.

6 “(B) TESTING DAY.—The testing days
7 shall be—

8 “(i) the first day of the corporation’s
9 taxable year (determined without regard to
10 this section), or

11 “(ii) the days during such representa-
12 tive period as the Secretary may pre-
13 scribe.”.

14 (16) Clause (ii) of section 904(d)(2)(A) is
15 amended to read as follows:

16 “(ii) CERTAIN AMOUNTS INCLUDED.—
17 Except as provided in clause (iii), the term
18 ‘passive income’ includes, except as pro-
19 vided in subparagraph (E)(iii) or para-
20 graph (3)(I), any amount includible in
21 gross income under section 1293 (relating
22 to certain passive foreign investment com-
23 panies).”.

24 (17)(A) Subparagraph (A) of section 904(g)(1),
25 as redesignated by section 204, is amended by add-

1 ing “or” at the end of clause (i), by striking clause
2 (ii), and by redesignating clause (iii) as clause (ii).

3 (B) The paragraph heading of paragraph (2) of
4 section 904(g), as so redesignated, is amended by
5 striking “FOREIGN PERSONAL HOLDING OR”.

6 (18) Section 951 is amended by striking sub-
7 sections (c) and (d) and by redesignating subsections
8 (e) and (f) as subsections (e) and (d), respectively.

9 (19) Paragraph (3) of section 989(b) is amend-
10 ed by striking “, 551(a),”.

11 (20) Paragraph (5) of section 1014(b) is
12 amended by inserting “and before January 1,
13 2005,” after “August 26, 1937,”.

14 (21) Subsection (a) of section 1016 is amended
15 by striking paragraph (13).

16 (22)(A) Paragraph (3) of section 1212(a) is
17 amended to read as follows:

18 “(3) SPECIAL RULES ON CARRYBACKS.—A net
19 capital loss of a corporation shall not be carried
20 back under paragraph (1)(A) to a taxable year—

21 “(A) for which it is a regulated investment
22 company (as defined in section 851), or

23 “(B) for which it is a real estate invest-
24 ment trust (as defined in section 856).”.

1 (B) The amendment made by subparagraph (A)
2 shall apply to taxable years beginning after Decem-
3 ber 31, 2004.

4 (23) Section 1223 is amended by striking para-
5 graph (10) and by redesignating the following para-
6 graphs accordingly.

7 (24) Subsection (d) of section 1248 is amended
8 by striking paragraph (5) and by redesignating
9 paragraphs (6) and (7) as paragraphs (5) and (6),
10 respectively.

11 (25) Paragraph (2) of section 1260(c) is
12 amended by striking subparagraphs (H) and (I) and
13 by redesignating subparagraph (J) as subparagraph
14 (H).

15 (26)(A) Subparagraph (F) of section
16 1291(b)(3) is amended by striking “551(d), 959(a),”
17 and inserting “959(a)”.

18 (B) Subsection (e) of section 1291 is amended
19 by inserting “(as in effect on the day before the date
20 of the enactment of the Jumpstart Our Business
21 Strength (JOBS) Act)” after “section 1246”.

22 (27) Paragraph (2) of section 1294(a) is
23 amended to read as follows:

24 “(2) ELECTION NOT PERMITTED WHERE
25 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION

1 951.—The taxpayer may not make an election under
2 paragraph (1) with respect to the undistributed
3 PFIC earnings tax liability attributable to a quali-
4 fied electing fund for the taxable year if any amount
5 is includible in the gross income of the taxpayer
6 under section 951 with respect to such fund for such
7 taxable year.”.

8 (28) Section 6035 is hereby repealed.

9 (29) Subparagraph (D) of section 6103(e)(1) is
10 amended by striking clause (iv) and redesignating
11 clauses (v) and (vi) as clauses (iv) and (v), respec-
12 tively.

13 (30) Subparagraph (B) of section 6501(e)(1) is
14 amended to read as follows:

15 “(B) CONSTRUCTIVE DIVIDENDS.—If the
16 taxpayer omits from gross income an amount
17 properly includible therein under section
18 951(a), the tax may be assessed, or a pro-
19 ceeding in court for the collection of such tax
20 may be done without assessing, at any time
21 within 6 years after the return was filed.”.

22 (31) Subsection (a) of section 6679 is
23 amended—

1 (A) by striking “6035, 6046, and 6046A”
2 in paragraph (1) and inserting “6046 and
3 6046A”, and

4 (B) by striking paragraph (3).

5 (32) Sections 170(f)(10)(A), 508(d), 4947, and
6 4948(c)(4) are each amended by striking
7 “556(b)(2),” each place it appears.

8 (33) The table of parts for subchapter G of
9 chapter 1 is amended by striking the item relating
10 to part III.

11 (34) The table of sections for part IV of sub-
12 chapter P of chapter 1 is amended by striking the
13 items relating to sections 1246 and 1247.

14 (35) The table of sections for subpart A of part
15 III of subchapter A of chapter 61 is amended by
16 striking the item relating to section 6035.

17 (d) **EFFECTIVE DATE.**—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2004, and to taxable
20 years of United States shareholders with or within which
21 such taxable years of foreign corporations end.

22 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**
23 **PART F.**

24 (a) **IN GENERAL.**—Clause (ii) of section
25 954(b)(3)(A) (relating to de minimis, etc., rules) is

1 amended by striking “\$1,000,000” and inserting
2 “\$5,000,000”.

3 (b) TECHNICAL AMENDMENTS.—

4 (1) Clause (ii) of section 864(d)(5)(A) is
5 amended by striking “\$1,000,000” and inserting
6 “\$5,000,000”.

7 (2) Clause (i) of section 881(c)(5)(A) is amend-
8 ed by striking “\$1,000,000” and inserting
9 “\$5,000,000”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years of foreign corpora-
12 tions beginning after December 31, 2004, and to taxable
13 years of United States shareholders with or within which
14 such taxable years of foreign corporations end.

15 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
16 **PARTNERSHIPS TO APPLY IN DETERMINING**
17 **SECTION 902 AND 960 CREDITS.**

18 (a) IN GENERAL.—Subsection (c) of section 902 is
19 amended by redesignating paragraph (7) as paragraph (8)
20 and by inserting after paragraph (6) the following new
21 paragraph:

22 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
23 PARTNERSHIPS.—Stock owned, directly or indirectly,
24 by or for a partnership shall be considered as being
25 owned proportionately by its partners. Stock consid-

1 ered to be owned by a person by reason of the pre-
2 ceding sentence shall, for purposes of applying such
3 sentence, be treated as actually owned by such per-
4 son. The Secretary may prescribe such regulations
5 as may be necessary to carry out the purposes of
6 this paragraph, including rules to account for special
7 partnership allocations of dividends, credits, and
8 other incidents of ownership of stock in determining
9 proportionate ownership.”.

10 (b) **CLARIFICATION OF COMPARABLE ATTRIBUTION**
11 **UNDER SECTION 901(b)(5).**—Paragraph (5) of section
12 901(b) is amended by striking “any individual” and in-
13 serring “any person”.

14 (c) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to taxes of foreign corporations
16 for taxable years of such corporations beginning after the
17 date of the enactment of this Act.

18 **SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION**

19 **RULES TO FOREIGN PERSONS.**

20 (a) **IN GENERAL.**—Section 263A(c) (relating to ex-
21 ceptions) is amended by adding at the end the following
22 new paragraph:

23 “(7) **FOREIGN PERSONS.**—Except for purposes
24 of applying sections 871(b)(1) and 882(a)(1), this
25 section shall not apply to any taxpayer who is not

1 a United States person if such taxpayer capitalizes
2 costs of produced property or property acquired for
3 resale by applying the method used to ascertain the
4 income, profit, or loss for purposes of reports or
5 statements to shareholders, partners, other propri-
6 etors, or beneficiaries, or for credit purposes.”.

7 (b) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendment made by
9 subsection (a) shall apply to taxable years beginning
10 after December 31, 2004.

11 (2) CHANGE IN METHOD OF ACCOUNTING.—In
12 the case of any taxpayer required by the amendment
13 made by this section to change its method of ac-
14 counting for its first taxable year beginning after
15 December 31, 2004—

16 (A) such change shall be treated as initi-
17 ated by the taxpayer,

18 (B) such change shall be treated as made
19 with the consent of the Secretary of the Treas-
20 ury, and

21 (C) the net amount of the adjustments re-
22 quired to be taken into account by the taxpayer
23 under section 481 of the Internal Revenue Code
24 of 1986 shall be taken into account in such first
25 year.

1 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
2 **FROM CERTAIN FOREIGN CORPORATIONS.**

3 (a) IN GENERAL.—Paragraph (2) of section 871(i)
4 (relating to tax not to apply to certain interest and divi-
5 dends) is amended by adding at the end the following new
6 subparagraph:

7 “(D) Dividends paid by a foreign corpora-
8 tion which are treated under section
9 861(a)(2)(B) as income from sources within the
10 United States.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to payments made after December
13 31, 2004.

14 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**
15 **ALIENS PRESENT IN THE UNITED STATES**
16 **FOR 183 DAYS OR MORE.**

17 (a) IN GENERAL.—Subsection (a) of section 871 is
18 amended by striking paragraph (2) and by redesignating
19 paragraph (3) as paragraph (2).

20 (b) CONFORMING AMENDMENT.—Section 1441(g) is
21 amended is amended by striking “section 871(a)(3)” and
22 inserting “section 871(a)(2)”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2003.

1 **Subtitle C—Additional**
2 **International Tax Provisions**

3 **SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND**
4 **VESSELS.**

5 (a) IN GENERAL.—Section 954(c)(2) is amended by
6 adding at the end the following new subparagraph:

7 “(D) CERTAIN RENTS, ETC.—

8 “(i) IN GENERAL.—Foreign personal
9 holding company income shall not include
10 qualified leasing income derived from or in
11 connection with the leasing or rental of
12 any aircraft or vessel.

13 “(ii) QUALIFIED LEASING INCOME.—
14 For purposes of this subparagraph, the
15 term ‘qualified leasing income’ means rents
16 and gains derived in the active conduct of
17 a trade or business of leasing with respect
18 to which the controlled foreign corporation
19 conducts substantial activity, but only if—

20 “(I) the leased property is used
21 by the lessee or other end-user in for-
22 eign commerce and predominantly
23 outside the United States, and

1 “(II) the lessee or other end-user
2 is not a related person (as defined in
3 subsection (d)(3)).

4 Any amount not treated as foreign per-
5 sonal holding income under this subpara-
6 graph shall not be treated as foreign base
7 company shipping income.”.

8 (b) CONFORMING AMENDMENT.—Section
9 954(c)(1)(B) is amended by inserting “or (2)(D)” after
10 “paragraph (2)(A)”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years of foreign corpora-
13 tions beginning after December 31, 2006, and to taxable
14 years of United States shareholders with or within which
15 such taxable years of foreign corporations end.

16 **SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BE-**
17 **TWEEN RELATED CONTROLLED FOREIGN**
18 **CORPORATIONS UNDER FOREIGN PERSONAL**
19 **HOLDING COMPANY INCOME RULES.**

20 (a) IN GENERAL.—Subsection (c) of section 954, as
21 amended by this Act, is amended by adding after para-
22 graph (4) the following new paragraph:

23 “(5) LOOK-THRU IN THE CASE OF RELATED
24 CONTROLLED FOREIGN CORPORATIONS.—For pur-
25 poses of this subsection, dividends, interest, rents,

1 and royalties received or accrued from a controlled
2 foreign corporation which is a related person (as de-
3 fined in subsection (b)(9)) shall not be treated as
4 foreign personal holding company income to the ex-
5 tent attributable or properly allocable (determined
6 under rules similar to the rules of subparagraphs
7 (C) and (D) of section 904(d)(3)) to income of the
8 related person which is not subpart F income (as de-
9 fined in section 952). For purposes of this para-
10 graph, interest shall include factoring income which
11 is treated as income equivalent to interest for pur-
12 poses of paragraph (1)(E). The Secretary shall pre-
13 scribe such regulations as may be appropriate to
14 prevent the abuse of the purposes of this para-
15 graph.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to taxable years of foreign corpora-
18 tions beginning after December 31, 2004, and to taxable
19 years of United States shareholders with or within which
20 such taxable years of foreign corporations end.

21 **SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PART-**
22 **nership Interests.**

23 (a) IN GENERAL.—Section 954(c) (defining foreign
24 personal holding company income), as amended by this

1 Act, is amended by adding after paragraph (5) the fol-
2 lowing new paragraph:

3 “(6) LOOK-THRU RULE FOR CERTAIN PARTNER-
4 SHIP SALES.—

5 “(A) IN GENERAL.—In the case of any
6 sale by a controlled foreign corporation of an
7 interest in a partnership with respect to which
8 such corporation is a 25-percent owner, such
9 corporation shall be treated for purposes of this
10 subsection as selling the proportionate share of
11 the assets of the partnership attributable to
12 such interest. The Secretary shall prescribe
13 such regulations as may be appropriate to pre-
14 vent abuse of the purposes of this paragraph,
15 including regulations providing for coordination
16 of this paragraph with the provisions of sub-
17 chapter K.

18 “(B) 25-PERCENT OWNER.—For purposes
19 of this paragraph, the term ‘25-percent owner’
20 means a controlled foreign corporation which
21 owns directly 25 percent or more of the capital
22 or profits interest in a partnership. For pur-
23 poses of the preceding sentence, if a controlled
24 foreign corporation is a shareholder or partner
25 of a corporation or partnership, the controlled

1 foreign corporation shall be treated as owning
2 directly its proportionate share of any such cap-
3 ital or profits interest held directly or indirectly
4 by such corporation or partnership”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to taxable years of foreign corpora-
7 tions beginning after December 31, 2004, and to taxable
8 years of United States shareholders with or within which
9 such taxable years of foreign corporations end.

10 **SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE**
11 **RATE FOR FOREIGN TAX PAID OTHER THAN**
12 **IN FUNCTIONAL CURRENCY.**

13 (a) IN GENERAL.—Paragraph (1) of section 986(a)
14 (relating to determination of foreign taxes and foreign cor-
15 poration’s earnings and profits) is amended by redesign-
16 ating subparagraph (D) as subparagraph (E) and by in-
17 serting after subparagraph (C) the following new subpara-
18 graph:

19 “(D) ELECTIVE EXCEPTION FOR TAXES
20 PAID OTHER THAN IN FUNCTIONAL CUR-
21 RENCY.—

22 “(i) IN GENERAL.—At the election of
23 the taxpayer, subparagraph (A) shall not
24 apply to any foreign income taxes the li-
25 ability for which is denominated in any

1 currency other than in the taxpayer's func-
2 tional currency.

3 “(ii) APPLICATION TO QUALIFIED
4 BUSINESS UNITS.—An election under this
5 subparagraph may apply to foreign income
6 taxes attributable to a qualified business
7 unit in accordance with regulations pre-
8 scribed by the Secretary.

9 “(iii) ELECTION.—Any such election
10 shall apply to the taxable year for which
11 made and all subsequent taxable years un-
12 less revoked with the consent of the Sec-
13 retary.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2004.

17 **SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.**

18 (a) IN GENERAL.—Paragraph (2) of section 904(d)
19 is amended by redesignating subparagraphs (H) and (I)
20 as subparagraphs (I) and (J), respectively, and by insert-
21 ing after subparagraph (G) the following new subpara-
22 graph:

23 “(H) TREATMENT OF INCOME TAX BASE
24 DIFFERENCES.—

1 the activity is performed by employees of a re-
2 lated person and—

3 “(i) the related person is an eligible
4 controlled foreign corporation the home
5 country of which is the same as the home
6 country of the corporation or unit to which
7 subparagraph (A)(ii)(II) is being applied,

8 “(ii) the activity is performed in the
9 home country of the related person, and

10 “(iii) the related person is com-
11 pensated on an arm’s-length basis for the
12 performance of the activity by its employ-
13 ees and such compensation is treated as
14 earned by such person in its home country
15 for purposes of the home country’s tax
16 laws.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years of such foreign
19 corporations beginning after December 31, 2004, and to
20 taxable years of United States shareholders with or within
21 which such taxable years of such foreign corporations end.

1 **SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE**
2 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
3 **CORPORATION.**

4 (a) IN GENERAL.—Section 956(c)(2) (relating to ex-
5 ceptions from property treated as United States property)
6 is amended by striking “and” at the end of subparagraph
7 (J), by striking the period at the end of subparagraph (K)
8 and inserting a semicolon, and by adding at the end the
9 following new subparagraphs:

10 “(L) securities acquired and held by a con-
11 trolled foreign corporation in the ordinary
12 course of its business as a dealer in securities
13 if—

14 “(i) the dealer accounts for the securi-
15 ties as securities held primarily for sale to
16 customers in the ordinary course of busi-
17 ness, and

18 “(ii) the dealer disposes of the securi-
19 ties (or such securities mature while held
20 by the dealer) within a period consistent
21 with the holding of securities for sale to
22 customers in the ordinary course of busi-
23 ness; and

24 “(M) an obligation of a United States per-
25 son which—

26 “(i) is not a domestic corporation, and

1 “(ii) is not—
2 “(I) a United States shareholder
3 (as defined in section 951(b)) of the
4 controlled foreign corporation, or
5 “(II) a partnership, estate, or
6 trust in which the controlled foreign
7 corporation, or any related person (as
8 defined in section 954(d)(3)), is a
9 partner, beneficiary, or trustee imme-
10 diately after the acquisition of any ob-
11 ligation of such partnership, estate, or
12 trust by the controlled foreign cor-
13 poration.”.

14 (b) CONFORMING AMENDMENT.—Section 956(e)(2)
15 is amended by striking “and (K)” in the last sentence and
16 inserting “, (K), and (L)”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2004, and to taxable
20 years of United States shareholders with or within which
21 such taxable years of foreign corporations end.

1 **SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST**
2 **PAID BY FOREIGN PARTNERSHIPS AND FOR-**
3 **EIGN CORPORATIONS.**

4 (a) IN GENERAL.—Paragraph (1) of section 861(a)
5 is amended by striking “and” at the end of subparagraph
6 (A), by striking the period at the end of subparagraph
7 (B) and inserting “, and”, and by adding at the end the
8 following new subparagraph:

9 “(C) in the case of a foreign partnership,
10 which is predominantly engaged in the active
11 conduct of a trade or business outside the
12 United States, any interest not paid by a trade
13 or business engaged in by the partnership in
14 the United States and not allocable to income
15 which is effectively connected (or treated as ef-
16 fectively connected) with the conduct of a trade
17 or business in the United States.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2003.

21 **SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN**
22 **TRANSFERS OF INTANGIBLE PROPERTY.**

23 (a) IN GENERAL.—Subparagraph (C) of section
24 367(d)(2) is amended by adding at the end the following
25 new sentence: “For purposes of applying section 904(d),

1 any such amount shall be treated in the same manner as
2 if such amount were a royalty.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to amounts treated as received pur-
5 suant to section 367(d)(2) of the Internal Revenue Code
6 of 1986 on or after August 5, 1997.

7 **SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN**
8 **REIT DISTRIBUTIONS ATTRIBUTABLE TO**
9 **GAIN FROM SALES OR EXCHANGES OF**
10 **UNITED STATES REAL PROPERTY INTERESTS.**

11 (a) **IN GENERAL.**—Paragraph (1) of section 897(h)
12 (relating to look-through of distributions) is amended by
13 adding at the end the following new sentence: “Notwith-
14 standing the preceding sentence, any distribution by a
15 REIT with respect to any class of stock which is regularly
16 traded on an established securities market located in the
17 United States shall not be treated as gain recognized from
18 the sale or exchange of a United States real property in-
19 terest if the shareholder did not own more than 5 percent
20 of such class of stock at any time during the taxable
21 year.”.

22 (b) **CONFORMING AMENDMENT.**—Paragraph (3) of
23 section 857(b) (relating to capital gains) is amended by
24 adding at the end the following new subparagraph:

1 “(F) CERTAIN DISTRIBUTIONS.—In the
2 case of a shareholder of a real estate invest-
3 ment trust to whom section 897 does not apply
4 by reason of the second sentence of section
5 897(h)(1), the amount which would be included
6 in computing long-term capital gains for such
7 shareholder under subparagraph (B) or (D)
8 (without regard to this subparagraph)—

9 “(i) shall not be included in com-
10 puting such shareholder’s long-term capital
11 gains, and

12 “(ii) shall be included in such share-
13 holder’s gross income as a dividend from
14 the real estate investment trust.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 the date of the enactment of this Act.

18 **SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**
19 **TRIBUTION AMOUNT.**

20 (a) IN GENERAL.—Subpart F of part III of sub-
21 chapter N of chapter 1 is amended by adding at the end
22 the following new section:

1 **“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-**
2 **EIGN DISTRIBUTION AMOUNT.**

3 “(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED
4 FOREIGN DISTRIBUTION AMOUNT.—If a corporation
5 elects the application of this section, a tax shall be im-
6 posed on the taxpayer in an amount equal to 5.25 percent
7 of—

8 “(1) the taxpayer’s excess qualified foreign dis-
9 tribution amount, and

10 “(2) the amount determined under section 78
11 which is attributable to such excess qualified foreign
12 distribution amount.

13 Such tax shall be imposed in lieu of the tax imposed under
14 section 11 or 55 on the amounts described in paragraphs
15 (1) and (2) for such taxable year.

16 “(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION
17 AMOUNT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘excess qualified
19 foreign distribution amount’ means the excess (if
20 any) of—

21 “(A) the aggregate dividends received by
22 the taxpayer during the taxable year which
23 are—

24 “(i) from 1 or more corporations
25 which are controlled foreign corporations
26 in which the taxpayer is a United States

1 shareholder on the date such dividends are
2 paid, and

3 “(ii) described in a domestic reinvest-
4 ment plan which—

5 “(I) is approved by the tax-
6 payer’s president, chief executive offi-
7 cer, or comparable official before the
8 payment of such dividends and subse-
9 quently approved by the taxpayer’s
10 board of directors, management com-
11 mittee, executive committee, or similar
12 body, and

13 “(II) provides for the reinvest-
14 ment of such dividends in the United
15 States (other than as payment for ex-
16 ecutive compensation), including as a
17 source for the funding of worker hir-
18 ing and training, infrastructure, re-
19 search and development, capital in-
20 vestments, or the financial stabiliza-
21 tion of the corporation for the pur-
22 poses of job retention or creation, over

23 “(B) the base dividend amount.

24 “(2) BASE DIVIDEND AMOUNT.—The term
25 ‘base dividend amount’ means an amount designated

1 under subsection (c)(7), but not less than the aver-
2 age amount of dividends received during the fixed
3 base period from 1 or more corporations which are
4 controlled foreign corporations in which the taxpayer
5 is a United States shareholder on the date such divi-
6 dends are paid.

7 “(3) FIXED BASE PERIOD.—

8 “(A) IN GENERAL.—The term ‘fixed base
9 period’ means each of 3 taxable years which are
10 among the 5 most recent taxable years of the
11 taxpayer ending on or before December 31,
12 2002, determined by disregarding—

13 “(i) the 1 taxable year for which the
14 taxpayer had the highest amount of divi-
15 dends from 1 or more corporations which
16 are controlled foreign corporations relative
17 to the other 4 taxable years, and

18 “(ii) the 1 taxable year for which the
19 taxpayer had the lowest amount of divi-
20 dends from such corporations relative to
21 the other 4 taxable years.

22 “(B) SHORTER PERIOD.—If the taxpayer
23 has fewer than 5 taxable years ending on or be-
24 fore December 31, 2002, then in lieu of apply-
25 ing subparagraph (A), the fixed base period

1 shall include all the taxable years of the tax-
2 payer ending on or before December 31, 2002.

3 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) DIVIDENDS.—The term ‘dividend’ has the
6 meaning given such term by section 316, except that
7 the term shall include amounts described in section
8 951(a)(1)(B), but shall not include amounts de-
9 scribed in sections 78 and 959.

10 “(2) CONTROLLED FOREIGN CORPORATIONS
11 AND UNITED STATES SHAREHOLDERS.—The term
12 ‘controlled foreign corporation’ has the meaning
13 given such term by section 957(a) and the term
14 ‘United States shareholder’ has the meaning given
15 such term by section 951(b).

16 “(3) FOREIGN TAX CREDITS.—The amount of
17 any income, war, profits, or excess profit taxes paid
18 (or deemed paid under sections 902 and 960) or ac-
19 crued by the taxpayer with respect to the excess
20 qualified foreign distribution amount for which a
21 credit would be allowable under section 901 in the
22 absence of this section, shall be reduced by 85 per-
23 cent. No deduction shall be allowed under this chap-
24 ter for the portion of any tax for which credit is not
25 allowable by reason of the preceding sentence.

1 “(4) FOREIGN TAX CREDIT LIMITATION.—For
2 purposes of section 904, there shall be disregarded
3 85 percent of—

4 “(A) the excess qualified foreign distribu-
5 tion amount,

6 “(B) the amount determined under section
7 78 which is attributable to such excess qualified
8 foreign distribution amount, and

9 “(C) the amounts (including assets, gross
10 income, and other relevant bases of apportion-
11 ment) which are attributable to the excess
12 qualified foreign distribution amount which
13 would, determined without regard to this sec-
14 tion, be used to apportion the expenses, losses,
15 and deductions of the taxpayer under section
16 861 and 864 in determining its taxable income
17 from sources without the United States.

18 For purposes of applying subparagraph (C), the
19 principles of section 864(e)(3)(A) shall apply.

20 “(5) TREATMENT OF ACQUISITIONS AND DIS-
21 POSITIONS.—Rules similar to the rules of section
22 41(f)(3) shall apply in the case of acquisitions or
23 dispositions of controlled foreign corporations occur-
24 ring on or after the first day of the earliest taxable

1 year taken into account in determining the fixed
2 base period.

3 “(6) TREATMENT OF CONSOLIDATED
4 GROUPS.—Members of an affiliated group of cor-
5 porations filing a consolidated return under section
6 1501 shall be treated as a single taxpayer for pur-
7 poses of this section.

8 “(7) DESIGNATION OF DIVIDENDS.—Subject to
9 subsection (b)(2), the taxpayer shall designate the
10 particular dividends received during the taxable year
11 from 1 or more corporations which are controlled
12 foreign corporations in which it is a United States
13 shareholder which are dividends excluded from the
14 excess qualified foreign distribution amount. The
15 total amount of such designated dividends shall
16 equal the base dividend amount.

17 “(8) TREATMENT OF EXPENSES, LOSSES, AND
18 DEDUCTIONS.—Any expenses, losses, or deductions
19 of the taxpayer allowable under subchapter B—

20 “(A) shall not be applied to reduce the
21 amounts described in subsection (a)(1), and

22 “(B) shall be applied to reduce other in-
23 come of the taxpayer (determined without re-
24 gard to the amounts described in subsection
25 (a)(1)).

1 “(d) ELECTION.—

2 “(1) IN GENERAL.—An election under this sec-
3 tion shall be made on the taxpayer’s timely filed in-
4 come tax return for the first taxable year (deter-
5 mined by taking extensions into account) ending 120
6 days or more after the date of the enactment of this
7 section, and, once made, may be revoked only with
8 the consent of the Secretary.

9 “(2) ALL CONTROLLED FOREIGN CORPORA-
10 TIONS.—The election shall apply to all corporations
11 which are controlled foreign corporations in which
12 the taxpayer is a United States shareholder during
13 the taxable year.

14 “(3) CONSOLIDATED GROUPS.—If a taxpayer is
15 a member of an affiliated group of corporations fil-
16 ing a consolidated return under section 1501 for the
17 taxable year, an election under this section shall be
18 made by the common parent of the affiliated group
19 which includes the taxpayer and shall apply to all
20 members of the affiliated group.

21 “(e) REGULATIONS.—The Secretary shall prescribe
22 such regulations as may be necessary and appropriate to
23 carry out the purposes of this section, including regula-
24 tions under section 55 and regulations addressing corpora-
25 tions which, during the fixed base period or thereafter,

1 join or leave an affiliated group of corporations filing a
2 consolidated return.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for subpart F of part III of subchapter N of chapter
5 1 is amended by adding at the end the following new item:

“Sec. 965. Toll tax imposed on excess qualified foreign distribu-
tion amount.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply only to the first taxable year of
8 the electing taxpayer ending 120 days or more after the
9 date of the enactment of this Act.

10 **SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN**
11 **WAGERS ON HORSE RACES AND DOG RACES**
12 **FROM GROSS INCOME OF NONRESIDENT**
13 **ALIEN INDIVIDUALS.**

14 (a) IN GENERAL.—Subsection (b) of section 872 (re-
15 lating to exclusions) is amended by redesignating para-
16 graphs (5), (6), and (7) as paragraphs (6), (7), and (8),
17 respectively, and inserting after paragraph (4) the fol-
18 lowing new paragraph:

19 “(5) INCOME DERIVED FROM WAGERING
20 TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—
21 Gross income derived by a nonresident alien indi-
22 vidual from a legal wagering transaction initiated
23 outside the United States in a parimutuel pool with

1 respect to a live horse race or dog race in the United
2 States.”.

3 (b) CONFORMING AMENDMENT.—Section 883(a)(4)
4 is amended by striking “(5), (6), and (7)” and inserting
5 “(6), (7), and (8)”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to wagers made after the date of
8 the enactment of this Act.

9 **SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO**
10 **RICO CORPORATIONS.**

11 (a) IN GENERAL.—Subsection (b) of section 881 is
12 amended by redesignating paragraph (2) as paragraph (3)
13 and by inserting after paragraph (1) the following new
14 paragraph:

15 “(2) COMMONWEALTH OF PUERTO RICO.—If
16 dividends are received during a taxable year by a
17 corporation—

18 “(A) created or organized in, or under the
19 law of, the Commonwealth of Puerto Rico, and

20 “(B) with respect to which the require-
21 ments of subparagraphs (A), (B), and (C) of
22 paragraph (1) are met for the taxable year,
23 subsection (a) shall be applied for such taxable year
24 by substituting ‘10 percent’ for ‘30 percent’.”.

1 (b) WITHHOLDING.—Subsection (c) of section 1442
2 (relating to withholding of tax on foreign corporations) is
3 amended—

4 (1) by striking “For purposes” and inserting
5 the following:

6 “(1) GUAM, AMERICAN SAMOA, THE NORTHERN
7 MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For
8 purposes”, and

9 (2) by adding at the end the following new
10 paragraph:

11 “(2) COMMONWEALTH OF PUERTO RICO.—If
12 dividends are received during a taxable year by a
13 corporation—

14 “(A) created or organized in, or under the
15 law of, the Commonwealth of Puerto Rico, and

16 “(B) with respect to which the require-
17 ments of subparagraphs (A), (B), and (C) of
18 section 881(b)(1) are met for the taxable year,
19 subsection (a) shall be applied for such taxable year
20 by substituting ‘10 percent’ for ‘30 percent’.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Subsection (b) of section 881 is amended by
23 striking “GUAM AND VIRGIN ISLANDS CORPORA-
24 TIONS” in the heading and inserting “POSSES-
25 SIONS”.

1 (2) appropriately applied the standard of review
2 contained in Article 17.6 of the Agreement on Im-
3 plementation of Article VI of the General Agreement
4 on Tariffs and Trade of 1994; or

5 (3) exceeded their authority or terms of ref-
6 erence under the Agreements referred to in para-
7 graph (1).

8 **SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS**
9 **ON TAXPAYERS OTHER THAN LARGE COR-**
10 **PORATIONS.**

11 (a) STUDY.—The Secretary of the Treasury or the
12 Secretary’s delegate shall conduct a study of the impact
13 of Federal international tax rules on taxpayers other than
14 large corporations, including the burdens placed on such
15 taxpayers in complying with such rules.

16 (b) REPORT.—Not later than 180 days after the date
17 of the enactment of this Act, the Secretary shall report
18 to the Committee on Finance of the Senate and the Com-
19 mittee on Ways and Means of the House of Representa-
20 tives the results of the study conducted under subsection
21 (a), including any recommendations for legislative or ad-
22 ministrative changes to reduce the compliance burden on
23 taxpayers other than large corporations and for such other
24 purposes as the Secretary determines appropriate.

1 **TITLE III—DOMESTIC MANUFAC-**
2 **TURING AND BUSINESS PRO-**
3 **VISIONS**

4 **Subtitle A—General Provisions**

5 **SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND**
6 **PROGRAM.**

7 (a) IN GENERAL.—Subparagraph (F) of section
8 144(a)(4) (relating to \$10,000,000 limit in certain cases)
9 is amended to read as follows:

10 “(F) ADDITIONAL CAPITAL EXPENDITURES
11 NOT TAKEN INTO ACCOUNT.—With respect to
12 any issue, in addition to any capital expenditure
13 described in subparagraph (C), capital expendi-
14 tures of not to exceed \$10,000,000 shall not be
15 taken into account for purposes of applying
16 subparagraph (A)(ii).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to bonds issued after the date of
19 the enactment of this Act.

20 **SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS**
21 **EXPENDITURES.**

22 (a) IN GENERAL.—Part VI of subchapter B of chap-
23 ter 1 (relating to itemized deductions for individuals and
24 corporations) is amended by inserting after section 190
25 the following new section:

1 **“SEC. 191. BROADBAND EXPENDITURES.**

2 “(a) TREATMENT OF EXPENDITURES.—

3 “(1) IN GENERAL.—A taxpayer may elect to
4 treat any qualified broadband expenditure which is
5 paid or incurred by the taxpayer as an expense
6 which is not chargeable to capital account. Any ex-
7 penditure which is so treated shall be allowed as a
8 deduction.

9 “(2) ELECTION.—An election under paragraph
10 (1) shall be made at such time and in such manner
11 as the Secretary may prescribe by regulation.

12 “(b) QUALIFIED BROADBAND EXPENDITURES.—For
13 purposes of this section—

14 “(1) IN GENERAL.—The term ‘qualified
15 broadband expenditure’ means, with respect to any
16 taxable year, any direct or indirect costs incurred
17 during 2004 and properly taken into account for
18 such taxable year with respect to—

19 “(A) the purchase or installation of quali-
20 fied equipment (including any upgrades there-
21 to), and

22 “(B) the connection of such qualified
23 equipment to any qualified subscriber.

24 “(2) CERTAIN SATELLITE EXPENDITURES EX-
25 CLUDED.—Such term shall not include any costs in-

1 curred with respect to the launching of any satellite
2 equipment.

3 “(3) LEASED EQUIPMENT.—Such term shall in-
4 clude so much of the purchase price paid by the les-
5 sor of qualified equipment subject to a lease de-
6 scribed in subsection (c)(2)(B) as is attributable to
7 expenditures incurred by the lessee which would oth-
8 erwise be described in paragraph (1).

9 “(c) WHEN EXPENDITURES TAKEN INTO AC-
10 COUNT.—For purposes of this section—

11 “(1) IN GENERAL.—Qualified broadband ex-
12 penditures with respect to qualified equipment shall
13 be taken into account with respect to the first tax-
14 able year in which—

15 “(A) current generation broadband services
16 are provided through such equipment to quali-
17 fied subscribers, or

18 “(B) next generation broadband services
19 are provided through such equipment to quali-
20 fied subscribers.

21 “(2) LIMITATION.—

22 “(A) IN GENERAL.—Qualified expenditures
23 shall be taken into account under paragraph (1)
24 only with respect to qualified equipment—

1 “(i) the original use of which com-
2 mences with the taxpayer, and

3 “(ii) which is placed in service, after
4 December 31, 2003.

5 “(B) SALE-LEASEBACKS.—For purposes of
6 subparagraph (A), if property—

7 “(i) is originally placed in service
8 after December 31, 2003, by any person,
9 and

10 “(ii) sold and leased back by such per-
11 son within 3 months after the date such
12 property was originally placed in service,
13 such property shall be treated as originally
14 placed in service not earlier than the date on
15 which such property is used under the leaseback
16 referred to in clause (ii).

17 “(d) SPECIAL ALLOCATION RULES.—

18 “(1) CURRENT GENERATION BROADBAND SERV-
19 ICES.—For purposes of determining the amount of
20 qualified broadband expenditures under subsection
21 (a)(1) with respect to qualified equipment through
22 which current generation broadband services are
23 provided, if the qualified equipment is capable of
24 serving both qualified subscribers and other sub-

1 subscribers, the qualified broadband expenditures shall
2 be multiplied by a fraction—

3 “(A) the numerator of which is the sum of
4 the number of potential qualified subscribers
5 within the rural areas and the underserved
6 areas which the equipment is capable of serving
7 with current generation broadband services, and

8 “(B) the denominator of which is the total
9 potential subscriber population of the area
10 which the equipment is capable of serving with
11 current generation broadband services.

12 “(2) NEXT GENERATION BROADBAND SERV-
13 ICES.—For purposes of determining the amount of
14 qualified broadband expenditures under subsection
15 (a)(1) with respect to qualified equipment through
16 which next generation broadband services are pro-
17 vided, if the qualified equipment is capable of serv-
18 ing both qualified subscribers and other subscribers,
19 the qualified expenditures shall be multiplied by a
20 fraction—

21 “(A) the numerator of which is the sum
22 of—

23 “(i) the number of potential qualified
24 subscribers within the rural areas and un-
25 derserved areas, plus

1 “(ii) the number of potential qualified
2 subscribers within the area consisting only
3 of residential subscribers not described in
4 clause (i),

5 which the equipment is capable of serving with
6 next generation broadband services, and

7 “(B) the denominator of which is the total
8 potential subscriber population of the area
9 which the equipment is capable of serving with
10 next generation broadband services.

11 “(e) DEFINITIONS.—For purposes of this section—

12 “(1) ANTENNA.—The term ‘antenna’ means
13 any device used to transmit or receive signals
14 through the electromagnetic spectrum, including sat-
15 ellite equipment.

16 “(2) CABLE OPERATOR.—The term ‘cable oper-
17 ator’ has the meaning given such term by section
18 602(5) of the Communications Act of 1934 (47
19 U.S.C. 522(5)).

20 “(3) COMMERCIAL MOBILE SERVICE CAR-
21 RIER.—The term ‘commercial mobile service carrier’
22 means any person authorized to provide commercial
23 mobile radio service as defined in section 20.3 of
24 title 47, Code of Federal Regulations.

1 “(4) CURRENT GENERATION BROADBAND SERV-
2 ICE.—The term ‘current generation broadband serv-
3 ice’ means the transmission of signals at a rate of
4 at least 1,000,000 bits per second to the subscriber
5 and at least 128,000 bits per second from the sub-
6 scriber.

7 “(5) MULTIPLEXING OR DEMULTIPLEXING.—
8 The term ‘multiplexing’ means the transmission of 2
9 or more signals over a single channel, and the term
10 ‘demultiplexing’ means the separation of 2 or more
11 signals previously combined by compatible multi-
12 plexing equipment.

13 “(6) NEXT GENERATION BROADBAND SERV-
14 ICE.—The term ‘next generation broadband service’
15 means the transmission of signals at a rate of at
16 least 22,000,000 bits per second to the subscriber
17 and at least 5,000,000 bits per second from the sub-
18 scriber.

19 “(7) NONRESIDENTIAL SUBSCRIBER.—The
20 term ‘nonresidential subscriber’ means any person
21 who purchases broadband services which are deliv-
22 ered to the permanent place of business of such per-
23 son.

24 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
25 term ‘open video system operator’ means any person

1 authorized to provide service under section 653 of
2 the Communications Act of 1934 (47 U.S.C. 573).

3 “(9) OTHER WIRELESS CARRIER.—The term
4 ‘other wireless carrier’ means any person (other than
5 a telecommunications carrier, commercial mobile
6 service carrier, cable operator, open video system op-
7 erator, or satellite carrier) providing current genera-
8 tion broadband services or next generation
9 broadband service to subscribers through the radio
10 transmission of energy.

11 “(10) PACKET SWITCHING.—The term ‘packet
12 switching’ means controlling or routing the path of
13 any digitized transmission signal which is assembled
14 into packets or cells.

15 “(11) PROVIDER.—The term ‘provider’ means,
16 with respect to any qualified equipment—

17 “(A) a cable operator,

18 “(B) a commercial mobile service carrier,

19 “(C) an open video system operator,

20 “(D) a satellite carrier,

21 “(E) a telecommunications carrier, or

22 “(F) any other wireless carrier,

23 providing current generation broadband services or
24 next generation broadband services to subscribers
25 through such qualified equipment.

1 “(12) PROVISION OF SERVICES.—A provider
2 shall be treated as providing services to 1 or more
3 subscribers if—

4 “(A) such a subscriber has been passed by
5 the provider’s equipment and can be connected
6 to such equipment for a standard connection
7 fee,

8 “(B) the provider is physically able to de-
9 liver current generation broadband services or
10 next generation broadband services, as applica-
11 ble, to such a subscriber without making more
12 than an insignificant investment with respect to
13 such subscriber,

14 “(C) the provider has made reasonable ef-
15 forts to make such subscribers aware of the
16 availability of such services,

17 “(D) such services have been purchased by
18 1 or more such subscribers, and

19 “(E) such services are made available to
20 such subscribers at average prices comparable
21 to those at which the provider makes available
22 similar services in any areas in which the pro-
23 vider makes available such services.

24 “(13) QUALIFIED EQUIPMENT.—

1 “(A) IN GENERAL.—The term ‘qualified
2 equipment’ means equipment which provides
3 current generation broadband services or next
4 generation broadband services—

5 “(i) at least a majority of the time
6 during periods of maximum demand to
7 each subscriber who is utilizing such serv-
8 ices, and

9 “(ii) in a manner substantially the
10 same as such services are provided by the
11 provider to subscribers through equipment
12 with respect to which no deduction is al-
13 lowed under subsection (a)(1).

14 “(B) ONLY CERTAIN INVESTMENT TAKEN
15 INTO ACCOUNT.—Except as provided in sub-
16 paragraph (C) or (D), equipment shall be taken
17 into account under subparagraph (A) only to
18 the extent it—

19 “(i) extends from the last point of
20 switching to the outside of the unit, build-
21 ing, dwelling, or office owned or leased by
22 a subscriber in the case of a telecommuni-
23 cations carrier,

24 “(ii) extends from the customer side
25 of the mobile telephone switching office to

1 a transmission/receive antenna (including
2 such antenna) owned or leased by a sub-
3 scriber in the case of a commercial mobile
4 service carrier,

5 “(iii) extends from the customer side
6 of the headend to the outside of the unit,
7 building, dwelling, or office owned or
8 leased by a subscriber in the case of a
9 cable operator or open video system oper-
10 ator, or

11 “(iv) extends from a transmission/re-
12 ceive antenna (including such antenna)
13 which transmits and receives signals to or
14 from multiple subscribers, to a trans-
15 mission/receive antenna (including such
16 antenna) on the outside of the unit, build-
17 ing, dwelling, or office owned or leased by
18 a subscriber in the case of a satellite car-
19 rier or other wireless carrier, unless such
20 other wireless carrier is also a tele-
21 communications carrier.

22 “(C) PACKET SWITCHING EQUIPMENT.—
23 Packet switching equipment, regardless of loca-
24 tion, shall be taken into account under subpara-
25 graph (A) only if it is deployed in connection

1 with equipment described in subparagraph (B)
2 and is uniquely designed to perform the func-
3 tion of packet switching for current generation
4 broadband services or next generation
5 broadband services, but only if such packet
6 switching is the last in a series of such func-
7 tions performed in the transmission of a signal
8 to a subscriber or the first in a series of such
9 functions performed in the transmission of a
10 signal from a subscriber.

11 “(D) MULTIPLEXING AND
12 DEMULTIPLEXING EQUIPMENT.—Multiplexing
13 and demultiplexing equipment shall be taken
14 into account under subparagraph (A) only to
15 the extent it is deployed in connection with
16 equipment described in subparagraph (B) and
17 is uniquely designed to perform the function of
18 multiplexing and demultiplexing packets or cells
19 of data and making associated application
20 adaptations, but only if such multiplexing or
21 demultiplexing equipment is located between
22 packet switching equipment described in sub-
23 paragraph (C) and the subscriber’s premises.

24 “(14) QUALIFIED SUBSCRIBER.—The term
25 ‘qualified subscriber’ means—

1 “(A) with respect to the provision of cur-
2 rent generation broadband services—

3 “(i) any nonresidential subscriber
4 maintaining a permanent place of business
5 in a rural area or underserved area, or

6 “(ii) any residential subscriber resid-
7 ing in a dwelling located in a rural area or
8 underserved area which is not a saturated
9 market, and

10 “(B) with respect to the provision of next
11 generation broadband services—

12 “(i) any nonresidential subscriber
13 maintaining a permanent place of business
14 in a rural area or underserved area, or

15 “(ii) any residential subscriber.

16 “(15) RESIDENTIAL SUBSCRIBER.—The term
17 ‘residential subscriber’ means any individual who
18 purchases broadband services which are delivered to
19 such individual’s dwelling.

20 “(16) RURAL AREA.—The term ‘rural area’
21 means any census tract which—

22 “(A) is not within 10 miles of any incor-
23 porated or census designated place containing
24 more than 25,000 people, and

1 “(B) is not within a county or county
2 equivalent which has an overall population den-
3 sity of more than 500 people per square mile of
4 land.

5 “(17) RURAL SUBSCRIBER.—The term ‘rural
6 subscriber’ means any residential subscriber residing
7 in a dwelling located in a rural area or nonresiden-
8 tial subscriber maintaining a permanent place of
9 business located in a rural area.

10 “(18) SATELLITE CARRIER.—The term ‘sat-
11 ellite carrier’ means any person using the facilities
12 of a satellite or satellite service licensed by the Fed-
13 eral Communications Commission and operating in
14 the Fixed-Satellite Service under part 25 of title 47
15 of the Code of Federal Regulations or the Direct
16 Broadcast Satellite Service under part 100 of title
17 47 of such Code to establish and operate a channel
18 of communications for distribution of signals, and
19 owning or leasing a capacity or service on a satellite
20 in order to provide such point-to-multipoint distribu-
21 tion.

22 “(19) SATURATED MARKET.—The term ‘satu-
23 rated market’ means any census tract in which, as
24 of the date of the enactment of this section—

1 “(A) current generation broadband services
2 have been provided by a single provider to 85
3 percent or more of the total number of potential
4 residential subscribers residing in dwellings lo-
5 cated within such census tract, and

6 “(B) such services can be utilized—

7 “(i) at least a majority of the time
8 during periods of maximum demand by
9 each such subscriber who is utilizing such
10 services, and

11 “(ii) in a manner substantially the
12 same as such services are provided by the
13 provider to subscribers through equipment
14 with respect to which no deduction is al-
15 lowed under subsection (a)(1).

16 “(20) SUBSCRIBER.—The term ‘subscriber’
17 means any person who purchases current generation
18 broadband services or next generation broadband
19 services.

20 “(21) TELECOMMUNICATIONS CARRIER.—The
21 term ‘telecommunications carrier’ has the meaning
22 given such term by section 3(44) of the Communica-
23 tions Act of 1934 (47 U.S.C. 153(44)), but—

1 “(A) includes all members of an affiliated
2 group of which a telecommunications carrier is
3 a member, and

4 “(B) does not include a commercial mobile
5 service carrier.

6 “(22) TOTAL POTENTIAL SUBSCRIBER POPU-
7 LATION.—The term ‘total potential subscriber popu-
8 lation’ means, with respect to any area and based on
9 the most recent census data, the total number of po-
10 tential residential subscribers residing in dwellings
11 located in such area and potential nonresidential
12 subscribers maintaining permanent places of busi-
13 ness located in such area.

14 “(23) UNDERSERVED AREA.—The term ‘under-
15 served area’ means—

16 “(A) any census tract which is located in—

17 “(i) an empowerment zone or enter-
18 prise community designated under section
19 1391, or

20 “(ii) the District of Columbia Enter-
21 prise Zone established under section 1400,

22 or

23 “(B) any census tract—

1 “(i) the poverty level of which is at
2 least 30 percent (based on the most recent
3 census data), and

4 “(ii) the median family income of
5 which does not exceed—

6 “(I) in the case of a census tract
7 located in a metropolitan statistical
8 area, 70 percent of the greater of the
9 metropolitan area median family in-
10 come or the statewide median family
11 income, and

12 “(II) in the case of a census tract
13 located in a nonmetropolitan statis-
14 tical area, 70 percent of the non-
15 metropolitan statewide median family
16 income.

17 “(24) UNDERSERVED SUBSCRIBER.—The term
18 ‘underserved subscriber’ means any residential sub-
19 scriber residing in a dwelling located in an under-
20 served area or nonresidential subscriber maintaining
21 a permanent place of business located in an under-
22 served area.

23 “(f) SPECIAL RULES.—

24 “(1) PROPERTY USED OUTSIDE THE UNITED
25 STATES, ETC., NOT QUALIFIED.—No expenditures

1 shall be taken into account under subsection (a)(1)
2 with respect to the portion of the cost of any prop-
3 erty referred to in section 50(b) or with respect to
4 the portion of the cost of any property specified in
5 an election under section 179.

6 “(2) BASIS REDUCTION.—

7 “(A) IN GENERAL.—For purposes of this
8 title, the basis of any property shall be reduced
9 by the portion of the cost of such property
10 taken into account under subsection (a)(1).

11 “(B) ORDINARY INCOME RECAPTURE.—
12 For purposes of section 1245, the amount of
13 the deduction allowable under subsection (a)(1)
14 with respect to any property which is of a char-
15 acter subject to the allowance for depreciation
16 shall be treated as a deduction allowed for de-
17 preciation under section 167.

18 “(3) COORDINATION WITH SECTION 38.—No
19 credit shall be allowed under section 38 with respect
20 to any amount for which a deduction is allowed
21 under subsection (a)(1).”.

22 (b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE
23 TELEPHONE COMPANIES.—Section 512(b) (relating to
24 modifications) is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(18) SPECIAL RULE FOR MUTUAL OR COOPER-
2 ATIVE TELEPHONE COMPANIES.—A mutual or coop-
3 erative telephone company which for the taxable year
4 satisfies the requirements of section 501(c)(12)(A)
5 may elect to reduce its unrelated business taxable in-
6 come for such year, if any, by an amount that does
7 not exceed the qualified broadband expenditures
8 which would be taken into account under section
9 191 for such year by such company if such company
10 was not exempt from taxation. Any amount which is
11 allowed as a deduction under this paragraph shall
12 not be allowed as a deduction under section 191 and
13 the basis of any property to which this paragraph
14 applies shall be reduced under section
15 1016(a)(29).”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) Section 263(a)(1) (relating to capital ex-
18 penditures) is amended by striking “or” at the end
19 of subparagraph (G), by striking the period at the
20 end of subparagraph (H) and inserting “, or”, and
21 by adding at the end the following new subpara-
22 graph:

23 “(I) expenditures for which a deduction is
24 allowed under section 191.”.

1 (2) Section 1016(a) of such Code is amended
2 by striking “and” at the end of paragraph (27), by
3 striking the period at the end of paragraph (28) and
4 inserting “, and”, and by adding at the end the fol-
5 lowing new paragraph:

6 “(29) to the extent provided in section
7 191(f)(2).”.

8 (3) The table of sections for part VI of sub-
9 chapter A of chapter 1 of such Code is amended by
10 inserting after the item relating to section 190 the
11 following new item:

“Sec. 191. Broadband expenditures.”.

12 (d) DESIGNATION OF CENSUS TRACTS.—

13 (1) IN GENERAL.—The Secretary of the Treas-
14 ury shall, not later than 90 days after the date of
15 the enactment of this Act, designate and publish
16 those census tracts meeting the criteria described in
17 paragraphs (16), (22), and (23) of section 191(e) of
18 the Internal Revenue Code of 1986 (as added by
19 this section). In making such designations, the Sec-
20 retary of the Treasury shall consult with such other
21 departments and agencies as the Secretary deter-
22 mines appropriate.

23 (2) SATURATED MARKET.—

24 (A) IN GENERAL.—For purposes of desig-
25 nating and publishing those census tracts meet-

1 ing the criteria described in subsection (e)(19)
2 of such section 191—

3 (i) the Secretary of the Treasury shall
4 prescribe not later than 30 days after the
5 date of the enactment of this Act the form
6 upon which any provider which takes the
7 position that it meets such criteria with re-
8 spect to any census tract shall submit a
9 list of such census tracts (and any other
10 information required by the Secretary) not
11 later than 60 days after the date of the
12 publication of such form, and

13 (ii) the Secretary of the Treasury
14 shall publish an aggregate list of such cen-
15 sus tracts and the applicable providers not
16 later than 30 days after the last date such
17 submissions are allowed under clause (i).

18 (B) NO SUBSEQUENT LISTS REQUIRED.—
19 The Secretary of the Treasury shall not be re-
20 quired to publish any list of census tracts meet-
21 ing such criteria subsequent to the list de-
22 scribed in subparagraph (A)(ii).

23 (e) OTHER REGULATORY MATTERS.—

24 (1) PROHIBITION.—No Federal or State agency
25 or instrumentality shall adopt regulations or rate-

1 making procedures that would have the effect of
2 eliminating or reducing any deduction or portion
3 thereof allowed under section 191 of the Internal
4 Revenue Code of 1986 (as added by this section) or
5 otherwise subverting the purpose of this section.

6 (2) TREASURY REGULATORY AUTHORITY.—It is
7 the intent of Congress in providing the election to
8 deduct qualified broadband expenditures under sec-
9 tion 191 of the Internal Revenue Code of 1986 (as
10 added by this section) to provide incentives for the
11 purchase, installation, and connection of equipment
12 and facilities offering expanded broadband access to
13 the Internet for users in certain low income and
14 rural areas of the United States, as well as to resi-
15 dential users nationwide, in a manner that main-
16 tains competitive neutrality among the various class-
17 es of providers of broadband services. Accordingly,
18 the Secretary of the Treasury shall prescribe such
19 regulations as may be necessary or appropriate to
20 carry out the purposes of section 191 of such Code,
21 including—

22 (A) regulations to determine how and when
23 a taxpayer that incurs qualified broadband ex-
24 penditures satisfies the requirements of section

1 191 of such Code to provide broadband serv-
2 ices, and

3 (B) regulations describing the information,
4 records, and data taxpayers are required to pro-
5 vide the Secretary to substantiate compliance
6 with the requirements of section 191 of such
7 Code.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to expenditures incurred after the
10 date of the enactment of this Act and before the date
11 which is 12 months after the date of the enactment of
12 this Act.

13 **SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DE-**
14 **TERMINATION OF PRODUCTION PERIOD FOR**
15 **DISTILLED SPIRITS UNDER SECTION 263A.**

16 (a) IN GENERAL.—Section 263A(f) of the Internal
17 Revenue Code of 1986 (relating to general exceptions) is
18 amended by adding at the end the following new para-
19 graph:

20 “(5) EXEMPTION OF NATURAL AGING PROCESS
21 IN DETERMINATION OF PRODUCTION PERIOD FOR
22 DISTILLED SPIRITS.—For purposes of this sub-
23 section, the production period for distilled spirits
24 shall be determined without regard to any period al-
25 located to the natural aging process.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to production periods beginning
3 after the date of the enactment of this Act.

4 **SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION**
5 **UNDER SECTION 355.**

6 (a) IN GENERAL.—Section 355(b) (defining active
7 conduct of a trade or business) is amended by adding at
8 the end the following new paragraph:

9 “(3) SPECIAL RULES RELATING TO ACTIVE
10 BUSINESS REQUIREMENT.—

11 “(A) IN GENERAL.—For purposes of deter-
12 mining whether a corporation meets the re-
13 quirement of paragraph (2)(A), all members of
14 such corporation’s separate affiliated group
15 shall be treated as one corporation. For pur-
16 poses of the preceding sentence, a corporation’s
17 separate affiliated group is the affiliated group
18 which would be determined under section
19 1504(a) if such corporation were the common
20 parent and section 1504(b) did not apply.

21 “(B) CONTROL.—For purposes of para-
22 graph (2)(D), all distributee corporations which
23 are members of the same affiliated group (as
24 defined in section 1504(a) without regard to

1 section 1504(b)) shall be treated as one dis-
2 tributee corporation.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subparagraph (A) of section 355(b)(2) is
5 amended to read as follows:

6 “(A) it is engaged in the active conduct of
7 a trade or business,”.

8 (2) Section 355(b)(2) is amended by striking
9 the last sentence.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendments made by
12 this section shall apply—

13 (A) to distributions after the date of the
14 enactment of this Act, and

15 (B) for purposes of determining the contin-
16 ued qualification under section 355(b)(2)(A) of
17 the Internal Revenue Code of 1986 (as amend-
18 ed by subsection (b)(1)) of distributions made
19 before such date, as a result of an acquisition,
20 disposition, or other restructuring after such
21 date.

22 (2) TRANSITION RULE.—The amendments
23 made by this section shall not apply to any distribu-
24 tion pursuant to a transaction which is—

1 (A) made pursuant to an agreement which
2 was binding on such date of enactment and at
3 all times thereafter,

4 (B) described in a ruling request submitted
5 to the Internal Revenue Service on or before
6 such date, or

7 (C) described on or before such date in a
8 public announcement or in a filing with the Se-
9 curities and Exchange Commission.

10 (3) ELECTION TO HAVE AMENDMENTS
11 APPLY.—Paragraph (2) shall not apply if the dis-
12 tributing corporation elects not to have such para-
13 graph apply to distributions of such corporation.
14 Any such election, once made, shall be irrevocable.

15 **SEC. 305. EXCLUSION OF CERTAIN INDEBTEDNESS OF**
16 **SMALL BUSINESS INVESTMENT COMPANIES**
17 **FROM ACQUISITION INDEBTEDNESS.**

18 (a) IN GENERAL.—Section 514(c) (relating to acqui-
19 sition indebtedness) is amended by adding at the end the
20 following new paragraph:

21 “(10) CERTAIN INDEBTEDNESS OF SMALL
22 BUSINESS INVESTMENT COMPANIES.—For purposes
23 of this section, the term ‘acquisition indebtedness’
24 does not include any indebtedness incurred by a
25 small business investment company licensed under

1 the Small Business Investment Act of 1958 which is
2 evidenced by a debenture—

3 “(A) issued by such company under section
4 303(a) of such Act, and

5 “(B) held or guaranteed by the Small
6 Business Administration.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to any indebtedness incurred after
9 December 31, 2003, by a small business investment com-
10 pany described in section 514(c)(10) of the Internal Rev-
11 enue Code of 1986 (as added by this section) with respect
12 to property acquired by such company after such date.

13 **SEC. 306. MODIFIED TAXATION OF IMPORTED ARCHERY**
14 **PRODUCTS.**

15 (a) BOWS.—Paragraph (1) of section 4161(b) (relat-
16 ing to bows) is amended to read as follows:

17 “(1) BOWS.—

18 “(A) IN GENERAL.—There is hereby im-
19 posed on the sale by the manufacturer, pro-
20 ducer, or importer of any bow which has a peak
21 draw weight of 30 pounds or more, a tax equal
22 to 11 percent of the price for which so sold.

23 “(B) ARCHERY EQUIPMENT.—There is
24 hereby imposed on the sale by the manufac-
25 turer, producer, or importer—

1 “(i) of any part or accessory suitable
2 for inclusion in or attachment to a bow de-
3 scribed in subparagraph (A), and

4 “(ii) of any quiver or broadhead suit-
5 able for use with an arrow described in
6 paragraph (2),

7 a tax equal to 11 percent of the price for which
8 so sold.”.

9 (b) ARROWS.—Subsection (b) of section 4161 (relat-
10 ing to bows and arrows, etc.) is amended by redesignating
11 paragraph (3) as paragraph (4) and inserting after para-
12 graph (2) the following:

13 “(3) ARROWS.—

14 “(A) IN GENERAL.—There is hereby im-
15 posed on the sale by the manufacturer, pro-
16 ducer, or importer of any arrow, a tax equal to
17 12 percent of the price for which so sold.

18 “(B) EXCEPTION.—In the case of any
19 arrow of which the shaft or any other compo-
20 nent has been previously taxed under paragraph
21 (1) or (2)—

22 “(i) section 6416(b)(3) shall not
23 apply, and

1 “(ii) the tax imposed by subparagraph
2 (A) shall be an amount equal to the excess
3 (if any) of—

4 “(I) the amount of tax imposed
5 by this paragraph (determined with-
6 out regard to this subparagraph), over

7 “(II) the amount of tax paid with
8 respect to the tax imposed under
9 paragraph (1) or (2) on such shaft or
10 component.

11 “(C) ARROW.—For purposes of this para-
12 graph, the term ‘arrow’ means any shaft de-
13 scribed in paragraph (2) to which additional
14 components are attached.”.

15 (c) CONFORMING AMENDMENTS.—Section
16 4161(b)(2) is amended—

17 (1) by inserting “(other than broadheads)”
18 after “point”, and

19 (2) by striking “ARROWS.—” in the heading
20 and inserting “ARROW COMPONENTS.—”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to articles sold by the manufac-
23 turer, producer, or importer after December 31, 2003.

1 **SEC. 307. MODIFICATION TO COOPERATIVE MARKETING**
2 **RULES TO INCLUDE VALUE ADDED PROC-**
3 **ESSING INVOLVING ANIMALS.**

4 (a) IN GENERAL.—Section 1388 (relating to defini-
5 tions and special rules) is amended by adding at the end
6 the following new subsection:

7 “(k) COOPERATIVE MARKETING INCLUDES VALUE-
8 ADDED PROCESSING INVOLVING ANIMALS.—For pur-
9 poses of section 521 and this subchapter, the marketing
10 of the products of members or other producers shall in-
11 clude the feeding of such products to cattle, hogs, fish,
12 chickens, or other animals and the sale of the resulting
13 animals or animal products.”.

14 (b) CONFORMING AMENDMENT.—Section 521(b) is
15 amended by adding at the end the following new para-
16 graph:

17 “(7) CROSS REFERENCE.—

**“For treatment of value-added processing involv-
ing animals, see section 1388(k).”.**

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 the date of the enactment of this Act.

1 **SEC. 308. EXTENSION OF DECLARATORY JUDGMENT PRO-**
2 **CEDURES TO FARMERS' COOPERATIVE ORGA-**
3 **NIZATIONS.**

4 (a) IN GENERAL.—Section 7428(a)(1) (relating to
5 declaratory judgments of tax exempt organizations) is
6 amended by striking “or” at the end of subparagraph (B)
7 and by adding at the end the following new subparagraph:

8 “(D) with respect to the initial classifica-
9 tion or continuing classification of a cooperative
10 as an organization described in section 521(b)
11 which is exempt from tax under section 521(a),
12 or”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to pleadings filed after
15 the date of the enactment of this Act.

16 **SEC. 309. TEMPORARY SUSPENSION OF PERSONAL HOLD-**
17 **ING COMPANY TAX.**

18 (a) IN GENERAL.—Section 541 (relating to imposi-
19 tion of personal holding company tax) is amended by add-
20 ing at the end the following new sentence: “The preceding
21 sentence shall not apply with respect to any taxable year
22 to which section 1(h)(11) (as in effect on the date of the
23 enactment of this sentence) applies.”.

24 (b) COORDINATION WITH ACCUMULATED EARNINGS
25 TAX.—Section 532(b) is amended by adding at the end
26 the following flush sentence:

1 “Paragraph (1) shall not apply to any taxable year to
2 which section 541 does not apply.”

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2003.

6 **SEC. 310. INCREASE IN SECTION 179 EXPENSING.**

7 (a) IN GENERAL.—Section 179(b)(2) (relating to re-
8 duction in limitation) is amended by inserting “50 percent
9 of” before “the amount”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years beginning after
12 December 31, 2002.

13 **SEC. 311. FIVE-YEAR CARRYBACK OF NET OPERATING**
14 **LOSSES.**

15 (a) IN GENERAL.—Subparagraph (H) of section
16 172(b)(1) is amended—

17 (1) by inserting “5-YEAR CARRYBACK OF CER-
18 TAIN LOSSES.—” after “(H)”, and

19 (2) by striking “or 2002” and inserting “,
20 2002, or 2003”.

21 (b) RULES RELATING TO CERTAIN EXTENDED NET
22 OPERATING LOSSES.—Section 172 is amended by redesi-
23 gnating subsection (k) as subsection (l) and by inserting
24 after subsection (j) the following new subsection:

1 “(k) RULES RELATING TO CERTAIN EXTENDED NET
2 OPERATING LOSSES.—For purposes of this section, in the
3 case of a taxpayer which has a net operating loss for any
4 taxable year ending during 2003 and does not make an
5 election under subsection (j), such taxpayer shall be
6 deemed to have made an election under paragraphs (4)(E)
7 and (2)(C)(iii) of section 168(k) with respect to all classes
8 of property for such taxable year.

9 (c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT
10 ON CERTAIN NOL CARRYOVERS.—Section
11 56(d)(1)(A)(ii)(I) (relating to general rule defining alter-
12 native tax net operating loss deduction) is amended—

13 (1) by striking “or 2002” and inserting “,
14 2002, or 2003”, and

15 (2) by striking “and 2002” and inserting “,
16 2002, and 2003”.

17 (d) TECHNICAL CORRECTIONS.—

18 (1) Subparagraph (H) of section 172(b)(1) is
19 amended by striking “a taxpayer which has”.

20 (2) Section 102(c)(2) of the Job Creation and
21 Worker Assistance Act of 2002 (Public Law 107–
22 147) is amended by striking “before January 1,
23 2003” and inserting “after December 31, 1990”.

24 (3)(A) Subclause (I) of section 56(d)(1)(A)(i) is
25 amended by striking “attributable to carryovers”.

1 (B) Subclause (I) of section 56(d)(1)(A)(ii) is
2 amended—

3 (i) by striking “for taxable years” and in-
4 serting “from taxable years”, and

5 (ii) by striking “carryforwards” and insert-
6 ing “carryovers”.

7 (e) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to net operating losses for taxable years
11 ending after December 31, 2002.

12 (2) TECHNICAL CORRECTIONS.—The amend-
13 ments made by subsection (d) shall take effect as if
14 included in the amendments made by section 102 of
15 the Job Creation and Worker Assistance Act of
16 2002.

17 (3) ELECTION.—In the case of a net operating
18 loss for a taxable year ending during 2003—

19 (A) any election made under section
20 172(b)(3) of such Code may (notwithstanding
21 such section) be revoked before April 15, 2004,
22 and

23 (B) any election made under section 172(j)
24 of such Code shall (notwithstanding such sec-

1 (b) INCREASE IN RATES OF ALTERNATIVE INCRE-
2 MENTAL CREDIT.—Subparagraph (A) of section 41(c)(4)
3 (relating to election of alternative incremental credit) is
4 amended—

5 (1) by striking “2.65 percent” and inserting “3
6 percent”,

7 (2) by striking “3.2 percent” and inserting “4
8 percent”, and

9 (3) by striking “3.75 percent” and inserting “5
10 percent”.

11 (c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALI-
12 FIED RESEARCH EXPENSES.—

13 (1) IN GENERAL.—Subsection (c) of section 41
14 (relating to base amount) is amended by redesignig-
15 nating paragraphs (5) and (6) as paragraphs (6)
16 and (7), respectively, and by inserting after para-
17 graph (4) the following new paragraph:

18 “(5) ELECTION OF ALTERNATIVE SIMPLIFIED
19 CREDIT.—

20 “(A) IN GENERAL.—At the election of the
21 taxpayer, the credit determined under sub-
22 section (a)(1) shall be equal to 12 percent of so
23 much of the qualified research expenses for the
24 taxable year as exceeds 50 percent of the aver-
25 age qualified research expenses for the 3 tax-

1 able years preceding the taxable year for which
2 the credit is being determined.

3 “(B) SPECIAL RULE IN CASE OF NO
4 QUALIFIED RESEARCH EXPENSES IN ANY OF 3
5 PRECEDING TAXABLE YEARS.—

6 “(i) TAXPAYERS TO WHICH SUBPARA-
7 GRAPH APPLIES.—The credit under this
8 paragraph shall be determined under this
9 subparagraph if the taxpayer has no quali-
10 fied research expenses in any 1 of the 3
11 taxable years preceding the taxable year
12 for which the credit is being determined.

13 “(ii) CREDIT RATE.—The credit de-
14 termined under this subparagraph shall be
15 equal to 6 percent of the qualified research
16 expenses for the taxable year.

17 “(C) ELECTION.—An election under this
18 paragraph shall apply to the taxable year for
19 which made and all succeeding taxable years
20 unless revoked with the consent of the Sec-
21 retary. An election under this paragraph may
22 not be made for any taxable year to which an
23 election under paragraph (4) applies.”

24 (2) COORDINATION WITH ELECTION OF ALTER-
25 NATIVE INCREMENTAL CREDIT.—

1 (A) IN GENERAL.—Section 41(c)(4)(B)
2 (relating to election) is amended by adding at
3 the end the following: “An election under this
4 paragraph may not be made for any taxable
5 year to which an election under paragraph (5)
6 applies.”

7 (B) TRANSITION RULE.—In the case of an
8 election under section 41(c)(4) of the Internal
9 Revenue Code of 1986 which applies to the tax-
10 able year which includes the date of the enact-
11 ment of this Act, such election shall be treated
12 as revoked with the consent of the Secretary of
13 the Treasury if the taxpayer makes an election
14 under section 41(c)(5) of such Code (as added
15 by paragraph (1)) for such year.

16 (f) EFFECTIVE DATES.—

17 (1) SUBSECTION (a).—The amendments made
18 by subsection (a) shall apply to amounts paid or in-
19 curred after the date of the enactment of this Act.

20 (2) SUBSECTIONS (b) AND (c).—The amend-
21 ments made by subsections (b) and (c) shall apply
22 to taxable years beginning after December 31, 2004.

23 **SEC. 313. EXPANSION OF RESEARCH CREDIT.**

24 (a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-
25 TAIN COLLABORATIVE RESEARCH CONSORTIA.—

1 lic interest (within the meaning of sec-
2 tion 501(c)(3)),

3 “(ii) which is not a private founda-
4 tion,

5 “(iii) to which at least 5 unrelated
6 persons paid or incurred during the cal-
7 endar year in which the taxable year of the
8 organization begins amounts (including as
9 contributions) to such organization for re-
10 search, and

11 “(iv) to which no single person paid
12 or incurred (including as contributions)
13 during such calendar year an amount
14 equal to more than 50 percent of the total
15 amounts received by such organization
16 during such calendar year for research.

17 “(B) TREATMENT OF PERSONS.—All per-
18 sons treated as a single employer under sub-
19 section (a) or (b) of section 52 shall be treated
20 as related persons for purposes of subparagraph
21 (A)(iii) and as a single person for purposes of
22 subparagraph (A)(iv).”.

23 (3) CONFORMING AMENDMENT.—Section
24 41(b)(3)(C) is amended by inserting “(other than a
25 research consortium)” after “organization”.

1 (b) REPEAL OF LIMITATION ON CONTRACT RE-
2 SEARCH EXPENSES PAID TO SMALL BUSINESSES, UNI-
3 VERSITIES, AND FEDERAL LABORATORIES.—Section
4 41(b)(3) (relating to contract research expenses) is
5 amended by adding at the end the following new subpara-
6 graph:

7 “(D) AMOUNTS PAID TO ELIGIBLE SMALL
8 BUSINESSES, UNIVERSITIES, AND FEDERAL
9 LABORATORIES.—

10 “(i) IN GENERAL.—In the case of
11 amounts paid by the taxpayer to—

12 “(I) an eligible small business,

13 “(II) an institution of higher
14 education (as defined in section
15 3304(f)), or

16 “(III) an organization which is a
17 Federal laboratory,

18 for qualified research which is energy re-
19 search, subparagraph (A) shall be applied
20 by substituting ‘100 percent’ for ‘65 per-
21 cent’.

22 “(ii) ELIGIBLE SMALL BUSINESS.—
23 For purposes of this subparagraph, the
24 term ‘eligible small business’ means a
25 small business with respect to which the

1 taxpayer does not own (within the meaning
2 of section 318) 50 percent or more of—

3 “(I) in the case of a corporation,
4 the outstanding stock of the corpora-
5 tion (either by vote or value), and

6 “(II) in the case of a small busi-
7 ness which is not a corporation, the
8 capital and profits interests of the
9 small business.

10 “(iii) SMALL BUSINESS.—For pur-
11 poses of this subparagraph—

12 “(I) IN GENERAL.—The term
13 ‘small business’ means, with respect
14 to any calendar year, any person if
15 the annual average number of employ-
16 ees employed by such person during
17 either of the 2 preceding calendar
18 years was 500 or fewer. For purposes
19 of the preceding sentence, a preceding
20 calendar year may be taken into ac-
21 count only if the person was in exist-
22 ence throughout the year.

23 “(II) STARTUPS, CONTROLLED
24 GROUPS, AND PREDECESSORS.—Rules
25 similar to the rules of subparagraphs

1 (B) and (D) of section 220(c)(4) shall
2 apply for purposes of this clause.

3 “(iv) FEDERAL LABORATORY.—For
4 purposes of this subparagraph, the term
5 ‘Federal laboratory’ has the meaning given
6 such term by section 4(6) of the Steven-
7 son-Wydler Technology Innovation Act of
8 1980 (15 U.S.C. 3703(6)), as in effect on
9 the date of the enactment of the Energy
10 Tax Incentives Act of 2003.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to amounts paid or incurred after
13 December 31, 2004.

14 **Subtitle B—Manufacturing**
15 **Relating to Films**

16 **SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELE-**
17 **VISION PRODUCTIONS.**

18 (a) IN GENERAL.—Part VI of subchapter B of chap-
19 ter 1 is amended by inserting after section 180 the fol-
20 lowing new section:

21 **“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELE-**
22 **VISION PRODUCTIONS.**

23 “(a) ELECTION TO TREAT CERTAIN COSTS OF
24 QUALIFIED FILM AND TELEVISION PRODUCTIONS AS EX-
25 PENSES.—

1 “(1) IN GENERAL.—A taxpayer may elect to
2 treat the cost of any qualified film or television pro-
3 duction as an expense which is not chargeable to
4 capital account. Any cost so treated shall be allowed
5 as a deduction.

6 “(2) DOLLAR LIMITATION.—

7 “(A) IN GENERAL.—The aggregate cost
8 which may be taken into account under para-
9 graph (1) with respect to each qualified film or
10 television production shall not exceed
11 \$15,000,000.

12 “(B) HIGHER DOLLAR LIMITATION FOR
13 PRODUCTIONS IN CERTAIN AREAS.—In the case
14 of any qualified film or television production the
15 aggregate cost of which is significantly incurred
16 in an area eligible for designation as—

17 “(i) a low-income community under
18 section 45D, or

19 “(ii) a distressed county or isolated
20 area of distress by the Delta Regional Au-
21 thority established under section 2009aa-1
22 of title 7, United States Code,
23 subparagraph (A) shall be applied by sub-
24 stituting ‘\$20,000,000’ for ‘\$15,000,000’.

25 “(b) AMORTIZATION OF REMAINING COSTS.—

1 “(1) IN GENERAL.—If an election is made
2 under subsection (a) with respect to any qualified
3 film or television production, that portion of the
4 basis of such production in excess of the amount
5 taken into account under subsection (a) shall be al-
6 lowed as a deduction ratably over the 36-month pe-
7 riod beginning with the month in which such produc-
8 tion is placed in service.

9 “(2) NO OTHER DEDUCTION OR AMORTIZATION
10 DEDUCTION ALLOWABLE.—With respect to the basis
11 of any qualified film or television production de-
12 scribed in paragraph (1), no other depreciation or
13 amortization deduction shall be allowable.

14 “(c) ELECTION.—

15 “(1) IN GENERAL.—An election under sub-
16 section (a) with respect to any qualified film or tele-
17 vision production shall be made in such manner as
18 prescribed by the Secretary and by the due date (in-
19 cluding extensions) for filing the taxpayer’s return of
20 tax under this chapter for the taxable year in which
21 costs of the production are first incurred.

22 “(2) REVOCATION OF ELECTION.—Any election
23 made under subsection (a) may not be revoked with-
24 out the consent of the Secretary.

1 “(d) QUALIFIED FILM OR TELEVISION PRODUC-
2 TION.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘qualified film or
4 television production’ means any production de-
5 scribed in paragraph (2) if 75 percent of the total
6 compensation of the production is qualified com-
7 pensation.

8 “(2) PRODUCTION.—

9 “(A) IN GENERAL.—A production is de-
10 scribed in this paragraph if such production is
11 property described in section 168(f)(3). For
12 purposes of a television series, only the first 44
13 episodes of such series may be taken into ac-
14 count.

15 “(B) EXCEPTION.—A production is not de-
16 scribed in this paragraph if records are required
17 under section 2257 of title 18, United States
18 Code, to be maintained with respect to any per-
19 former in such production.

20 “(3) QUALIFIED COMPENSATION.—For pur-
21 poses of paragraph (1)—

22 “(A) IN GENERAL.—The term ‘qualified
23 compensation’ means compensation for services
24 performed in the United States by actors, direc-

1 **SEC. 322. MODIFICATION OF APPLICATION OF INCOME**
2 **FORECAST METHOD OF DEPRECIATION.**

3 (a) IN GENERAL.—Section 167(g) (relating to depre-
4 ciation under income forecast method) is amended by add-
5 ing at the end the following new paragraph:

6 “(7) TREATMENT OF PARTICIPATIONS AND RE-
7 SIDUALS.—

8 “(A) IN GENERAL.—For purposes of deter-
9 mining the depreciation deduction allowable
10 with respect to a property under this sub-
11 section, the taxpayer may include participations
12 and residuals with respect to such property in
13 the adjusted basis of such property for the tax-
14 able year in which the property is placed in
15 service, but only to the extent that such partici-
16 pations and residuals relate to income estimated
17 (for purposes of this subsection) to be earned in
18 connection with the property before the close of
19 the 10th taxable year referred to in paragraph
20 (1)(A).

21 “(B) PARTICIPATIONS AND RESIDUALS.—
22 For purposes of this paragraph, the term ‘par-
23 ticipations and residuals’ means, with respect to
24 any property, costs the amount of which by con-
25 tract varies with the amount of income earned
26 in connection with such property.

1 “(C) SPECIAL RULES RELATING TO RE-
2 COMPUTATION YEARS.—If the adjusted basis of
3 any property is determined under this para-
4 graph, paragraph (4) shall be applied by sub-
5 stituting ‘for each taxable year in such period’
6 for ‘for such period’.

7 “(D) OTHER SPECIAL RULES.—

8 “(i) PARTICIPATIONS AND RESIDU-
9 ALS.—Notwithstanding subparagraph (A),
10 the taxpayer may exclude participations
11 and residuals from the adjusted basis of
12 such property and deduct such participa-
13 tions and residuals in the taxable year that
14 such participations and residuals are paid.

15 “(ii) COORDINATION WITH OTHER
16 RULES.—Deductions computed in accord-
17 ance with this paragraph shall be allowable
18 notwithstanding paragraph (1)(B) or sec-
19 tions 263, 263A, 404, 419, or 461(h).

20 “(E) AUTHORITY TO MAKE ADJUST-
21 MENTS.—The Secretary shall prescribe appro-
22 priate adjustments to the basis of property and
23 to the look-back method for the additional
24 amounts allowable as a deduction solely by rea-
25 son of this paragraph.”.

1 (b) DETERMINATION OF INCOME.—Section 167(g)(5)
2 (relating to special rules) is amended by redesignating
3 subparagraphs (E) and (F) as subparagraphs (F) and
4 (G), respectively, and inserting after subparagraph (D)
5 the following new subparagraph:

6 “(E) TREATMENT OF DISTRIBUTION
7 COSTS.—For purposes of this subsection, the
8 income with respect to any property shall be the
9 taxpayer’s gross income from such property.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to property placed in service after
12 the date of the enactment of this Act.

13 **Subtitle C—Manufacturing** 14 **Relating to Timber**

15 **SEC. 331. EXPENSING OF CERTAIN REFORESTATION EX-** 16 **PENDITURES.**

17 (a) IN GENERAL.—So much of subsection (b) of sec-
18 tion 194 (relating to amortization of reforestation expendi-
19 tures) as precedes paragraph (2) is amended to read as
20 follows:

21 “(b) TREATMENT AS EXPENSES.—

22 “(1) ELECTION TO TREAT CERTAIN REFOREST-
23 ATION EXPENDITURES AS EXPENSES.—

24 “(A) IN GENERAL.—In the case of any
25 qualified timber property with respect to which

1 the taxpayer has made (in accordance with reg-
2 ulations prescribed by the Secretary) an election
3 under this subsection, the taxpayer shall treat
4 reforestation expenditures which are paid or in-
5 curred during the taxable year with respect to
6 such property as an expense which is not
7 chargeable to capital account. The reforestation
8 expenditures so treated shall be allowed as a de-
9 duction.

10 “(B) DOLLAR LIMITATION.—The aggre-
11 gate amount of reforestation expenditures which
12 may be taken into account under subparagraph
13 (A) with respect to each qualified timber prop-
14 erty for any taxable year shall not exceed
15 \$10,000 (\$5,000 in the case of a separate re-
16 turn by a married individual (as defined in sec-
17 tion 7703)).”.

18 (b) NET AMORTIZABLE BASIS.—Section 194(c)(2)
19 (defining amortizable basis) is amended by inserting
20 “which have not been taken into account under subsection
21 (b)” after “expenditures”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 194(b) is amended by striking para-
24 graphs (3) and (4).

1 (2) Section 194(b)(2) is amended by striking
2 “paragraph (1)” both places it appears and inserting
3 “paragraph (1)(B)”.

4 (3) Section 194(e) is amended by striking para-
5 graph (4) and inserting the following new para-
6 graphs:

7 “(4) TREATMENT OF TRUSTS AND ESTATES.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), this section shall not apply
10 to trusts and estates.

11 “(B) AMORTIZATION DEDUCTION AL-
12 LOWED TO ESTATES.—The benefit of the de-
13 duction for amortization provided by subsection
14 (a) shall be allowed to estates in the same man-
15 ner as in the case of an individual. The allow-
16 able deduction shall be apportioned between the
17 income beneficiary and the fiduciary under reg-
18 ulations prescribed by the Secretary. Any
19 amount so apportioned to a beneficiary shall be
20 taken into account for purposes of determining
21 the amount allowable as a deduction under sub-
22 section (a) to such beneficiary.

23 “(5) APPLICATION WITH OTHER DEDUC-
24 TIONS.—No deduction shall be allowed under any
25 other provision of this chapter with respect to any

1 expenditure with respect to which a deduction is al-
2 lowed or allowable under this section to the taxpayer
3 .”.

4 (4) The heading for section 194 is amended by
5 striking “**AMORTIZATION**” and inserting “**TREAT-**
6 **MENT**”.

7 (5) The item relating to section 194 in the table
8 of sections for part VI of subchapter B of chapter
9 1 is amended by striking “Amortization” and insert-
10 ing “Treatment”.

11 (d) REPEAL OF REFORESTATION CREDIT.—

12 (1) IN GENERAL.—Section 46 (relating to
13 amount of credit) is amended—

14 (A) by adding “and” at the end of para-
15 graph (1),

16 (B) by striking “, and” at the end of para-
17 graph (2) and inserting a period, and

18 (C) by striking paragraph (3).

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 48 is amended—

21 (i) by striking subsection (b),

22 (ii) by striking “this subsection” in
23 paragraph (5) of subsection (a) and insert-
24 ing “subsection (a)”, and

1 (iii) by redesignating such paragraph
2 (5) as subsection (b).

3 (B) The heading for section 48 is amended
4 by striking “; **REFORESTATION CREDIT**”.

5 (C) The item relating to section 48 in the
6 table of sections for subpart E of part IV of
7 subchapter A of chapter 1 is amended by strik-
8 ing “, reforestation credit”.

9 (D) Section 50(c)(3) is amended by strik-
10 ing “or reforestation credit”.

11 (e) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply with respect to expenditures paid
13 or incurred after the date of the enactment of this Act.

14 **SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A**
15 **SALE OR EXCHANGE.**

16 Any election under section 631(a) of the Internal
17 Revenue Code of 1986 made for a taxable year ending on
18 or before the date of the enactment of this Act may be
19 revoked by the taxpayer for any taxable year ending after
20 such date. For purposes of determining whether the tax-
21 payer may make a further election under such section,
22 such election (and any revocation under this section) shall
23 not be taken into account.

1 **SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION**
2 **631(b) TO APPLY TO OUTRIGHT SALES BY**
3 **LANDOWNERS.**

4 (a) IN GENERAL.—The first sentence of section
5 631(b) (relating to disposal of timber with a retained eco-
6 nomic interest) is amended by striking “retains an eco-
7 nomic interest in such timber” and inserting “either re-
8 tains an economic interest in such timber or makes an
9 outright sale of such timber”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) The third sentence of section 631(b) is
12 amended by striking “The date of disposal” and in-
13 serting “In the case of disposal of timber with a re-
14 tained economic interest, the date of disposal”.

15 (2) The heading for section 631(b) is amended
16 by striking “WITH A RETAINED ECONOMIC INTER-
17 EST”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to sales after the date of the enact-
20 ment of this Act.

21 **SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR**
22 **TIMBER REITS.**

23 (a) EXPANSION OF PROHIBITED TRANSACTION SAFE
24 HARBOR.—Section 857(b)(6) (relating to income from
25 prohibited transactions) is amended by redesignating sub-
26 paragraphs (D) and (E) as subparagraphs (E) and (F),

1 respectively, and by inserting after subparagraph (C) the
2 following new subparagraph:

3 “(D) CERTAIN SALES NOT TO CONSTITUTE
4 PROHIBITED TRANSACTIONS.—For purposes of
5 this part, the term ‘prohibited transaction’ does
6 not include a sale of property which is a real es-
7 tate asset (as defined in section 856(c)(5)(B))
8 if—

9 “(i) the trust held the property for
10 not less than 4 years in connection with
11 the trade or business of producing timber,

12 “(ii) the aggregate expenditures made
13 by the trust, or a partner of the trust, dur-
14 ing the 4-year period preceding the date of
15 sale which—

16 “(I) are includible in the basis of
17 the property (other than timberland
18 acquisition expenditures), and

19 “(II) are directly related to oper-
20 ation of the property for the produc-
21 tion of timber or for the preservation
22 of the property for use as timberland,
23 do not exceed 30 percent of the net selling
24 price of the property,

1 “(iii) the aggregate expenditures made
2 by the trust, or a partner of the trust, dur-
3 ing the 4-year period preceding the date of
4 sale which—

5 “(I) are includible in the basis of
6 the property (other than timberland
7 acquisition expenditures), and

8 “(II) are not directly related to
9 operation of the property for the pro-
10 duction of timber, or for the preserva-
11 tion of the property for use as
12 timberland,

13 do not exceed 5 percent of the net selling
14 price of the property,

15 “(iv)(I) during the taxable year the
16 trust does not make more than 7 sales of
17 property (other than sales of foreclosure
18 property or sales to which section 1033 ap-
19 plies), or

20 “(II) the aggregate adjusted bases (as
21 determined for purposes of computing
22 earnings and profits) of property (other
23 than sales of foreclosure property or sales
24 to which section 1033 applies) sold during
25 the taxable year does not exceed 10 per-

1 cent of the aggregate bases (as so deter-
2 mined) of all of the assets of the trust as
3 of the beginning of the taxable year,

4 “(v) in the case that the requirement
5 of clause (iv)(I) is not satisfied, substan-
6 tially all of the marketing expenditures
7 with respect to the property were made
8 through an independent contractor (as de-
9 fined in section 856(d)(3)) from whom the
10 trust itself does not derive or receive any
11 income, and

12 “(vi) the sales price of the property
13 sold by the trust is not based in whole or
14 in part on income or profits, including in-
15 come or profits derived from the sale or
16 operation of such property.”.

17 (b) **EFFECTIVE DATE.**—The amendments made by
18 this section shall apply to taxable years beginning after
19 the date of the enactment of this Act.

1 **TITLE IV—ADDITIONAL**
2 **PROVISIONS**
3 **Subtitle A—Provisions Designed To**
4 **Curtail Tax Shelters**

5 **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
6 **TRINE.**

7 (a) IN GENERAL.—Section 7701 is amended by re-
8 designating subsection (n) as subsection (o) and by insert-
9 ing after subsection (m) the following new subsection:

10 “(n) CLARIFICATION OF ECONOMIC SUBSTANCE
11 DOCTRINE; ETC.—

12 “(1) GENERAL RULES.—

13 “(A) IN GENERAL.—In any case in which
14 a court determines that the economic substance
15 doctrine is relevant for purposes of this title to
16 a transaction (or series of transactions), such
17 transaction (or series of transactions) shall have
18 economic substance only if the requirements of
19 this paragraph are met.

20 “(B) DEFINITION OF ECONOMIC SUB-
21 STANCE.—For purposes of subparagraph (A)—

22 “(i) IN GENERAL.—A transaction has
23 economic substance only if—

24 “(I) the transaction changes in a
25 meaningful way (apart from Federal

1 tax effects) the taxpayer's economic
2 position, and

3 “(II) the taxpayer has a substan-
4 tial nontax purpose for entering into
5 such transaction and the transaction
6 is a reasonable means of accom-
7 plishing such purpose.

8 In applying subclause (II), a purpose of
9 achieving a financial accounting benefit
10 shall not be taken into account in deter-
11 mining whether a transaction has a sub-
12 stantial nontax purpose if the origin of
13 such financial accounting benefit is a re-
14 duction of income tax.

15 “(ii) SPECIAL RULE WHERE TAX-
16 PAYER RELIES ON PROFIT POTENTIAL.—A
17 transaction shall not be treated as having
18 economic substance by reason of having a
19 potential for profit unless—

20 “(I) the present value of the rea-
21 sonably expected pre-tax profit from
22 the transaction is substantial in rela-
23 tion to the present value of the ex-
24 pected net tax benefits that would be

1 allowed if the transaction were re-
2 spected, and

3 “(II) the reasonably expected
4 pre-tax profit from the transaction ex-
5 ceeds a risk-free rate of return.

6 “(C) TREATMENT OF FEES AND FOREIGN
7 TAXES.—Fees and other transaction expenses
8 and foreign taxes shall be taken into account as
9 expenses in determining pre-tax profit under
10 subparagraph (B)(ii).

11 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
12 TAX-INDIFFERENT PARTIES.—

13 “(A) SPECIAL RULES FOR FINANCING
14 TRANSACTIONS.—The form of a transaction
15 which is in substance the borrowing of money
16 or the acquisition of financial capital directly or
17 indirectly from a tax-indifferent party shall not
18 be respected if the present value of the deduc-
19 tions to be claimed with respect to the trans-
20 action is substantially in excess of the present
21 value of the anticipated economic returns of the
22 person lending the money or providing the fi-
23 nancial capital. A public offering shall be treat-
24 ed as a borrowing, or an acquisition of financial
25 capital, from a tax-indifferent party if it is rea-

1 sonably expected that at least 50 percent of the
2 offering will be placed with tax-indifferent par-
3 ties.

4 “(B) ARTIFICIAL INCOME SHIFTING AND
5 BASIS ADJUSTMENTS.—The form of a trans-
6 action with a tax-indifferent party shall not be
7 respected if—

8 “(i) it results in an allocation of in-
9 come or gain to the tax-indifferent party in
10 excess of such party’s economic income or
11 gain, or

12 “(ii) it results in a basis adjustment
13 or shifting of basis on account of over-
14 stating the income or gain of the tax-indif-
15 ferent party.

16 “(3) DEFINITIONS AND SPECIAL RULES.—For
17 purposes of this subsection—

18 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
19 The term ‘economic substance doctrine’ means
20 the common law doctrine under which tax bene-
21 fits under subtitle A with respect to a trans-
22 action are not allowable if the transaction does
23 not have economic substance or lacks a business
24 purpose.

1 “(B) TAX-INDIFFERENT PARTY.—The
2 term ‘tax-indifferent party’ means any person
3 or entity not subject to tax imposed by subtitle
4 A. A person shall be treated as a tax-indifferent
5 party with respect to a transaction if the items
6 taken into account with respect to the trans-
7 action have no substantial impact on such per-
8 son’s liability under subtitle A.

9 “(C) EXCEPTION FOR PERSONAL TRANS-
10 ACTIONS OF INDIVIDUALS.—In the case of an
11 individual, this subsection shall apply only to
12 transactions entered into in connection with a
13 trade or business or an activity engaged in for
14 the production of income.

15 “(D) TREATMENT OF LESSORS.—In apply-
16 ing paragraph (1)(B)(ii) to the lessor of tan-
17 gible property subject to a lease—

18 “(i) the expected net tax benefits with
19 respect to the leased property shall not in-
20 clude the benefits of—

21 “(I) depreciation,

22 “(II) any tax credit, or

23 “(III) any other deduction as
24 provided in guidance by the Secretary,
25 and

1 “(ii) subclause (II) of paragraph
2 (1)(B)(ii) shall be disregarded in deter-
3 mining whether any of such benefits are al-
4 lowable.

5 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
6 FECTED.—Except as specifically provided in this
7 subsection, the provisions of this subsection shall not
8 be construed as altering or supplanting any other
9 rule of law, and the requirements of this subsection
10 shall be construed as being in addition to any such
11 other rule of law.

12 “(5) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as may be necessary or ap-
14 propriate to carry out the purposes of this sub-
15 section. Such regulations may include exemptions
16 from the application of this subsection.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to transactions entered into after
19 the date of the enactment of this Act.

20 **SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORT-**
21 **ABLE TRANSACTION.**

22 (a) IN GENERAL.—Part I of subchapter B of chapter
23 68 (relating to assessable penalties) is amended by insert-
24 ing after section 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
2 **ABLE TRANSACTION INFORMATION WITH RE-**
3 **TURN OR STATEMENT.**

4 “(a) IMPOSITION OF PENALTY.—Any person who
5 fails to include on any return or statement any informa-
6 tion with respect to a reportable transaction which is re-
7 quired under section 6011 to be included with such return
8 or statement shall pay a penalty in the amount determined
9 under subsection (b).

10 “(b) AMOUNT OF PENALTY.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graphs (2) and (3), the amount of the penalty under
13 subsection (a) shall be \$50,000.

14 “(2) LISTED TRANSACTION.—The amount of
15 the penalty under subsection (a) with respect to a
16 listed transaction shall be \$100,000.

17 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
18 TIES AND HIGH NET WORTH INDIVIDUALS.—

19 “(A) IN GENERAL.—In the case of a fail-
20 ure under subsection (a) by—

21 “(i) a large entity, or

22 “(ii) a high net worth individual,

23 the penalty under paragraph (1) or (2) shall be
24 twice the amount determined without regard to
25 this paragraph.

1 “(B) LARGE ENTITY.—For purposes of
2 subparagraph (A), the term ‘large entity’
3 means, with respect to any taxable year, a per-
4 son (other than a natural person) with gross re-
5 ceipts in excess of \$10,000,000 for the taxable
6 year in which the reportable transaction occurs
7 or the preceding taxable year. Rules similar to
8 the rules of paragraph (2) and subparagraphs
9 (B), (C), and (D) of paragraph (3) of section
10 448(c) shall apply for purposes of this subpara-
11 graph.

12 “(C) HIGH NET WORTH INDIVIDUAL.—For
13 purposes of subparagraph (A), the term ‘high
14 net worth individual’ means, with respect to a
15 reportable transaction, a natural person whose
16 net worth exceeds \$2,000,000 immediately be-
17 fore the transaction.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) REPORTABLE TRANSACTION.—The term
20 ‘reportable transaction’ means any transaction with
21 respect to which information is required to be in-
22 cluded with a return or statement because, as deter-
23 mined under regulations prescribed under section
24 6011, such transaction is of a type which the Sec-

1 retary determines as having a potential for tax
2 avoidance or evasion.

3 “(2) LISTED TRANSACTION.—Except as pro-
4 vided in regulations, the term ‘listed transaction’
5 means a reportable transaction which is the same as,
6 or substantially similar to, a transaction specifically
7 identified by the Secretary as a tax avoidance trans-
8 action for purposes of section 6011.

9 “(d) AUTHORITY TO RESCIND PENALTY.—

10 “(1) IN GENERAL.—The Commissioner of In-
11 ternal Revenue may rescind all or any portion of any
12 penalty imposed by this section with respect to any
13 violation if—

14 “(A) the violation is with respect to a re-
15 portable transaction other than a listed trans-
16 action,

17 “(B) the person on whom the penalty is
18 imposed has a history of complying with the re-
19 quirements of this title,

20 “(C) it is shown that the violation is due
21 to an unintentional mistake of fact;

22 “(D) imposing the penalty would be
23 against equity and good conscience, and

1 “(C) the amount of the penalty rescinded.

2 “(5) REPORT.—The Commissioner shall each
3 year report to the Committee on Ways and Means
4 of the House of Representatives and the Committee
5 on Finance of the Senate—

6 “(A) a summary of the total number and
7 aggregate amount of penalties imposed, and re-
8 scinded, under this section, and

9 “(B) a description of each penalty re-
10 scinded under this subsection and the reasons
11 therefor.

12 “(e) PENALTY REPORTED TO SEC.—In the case of
13 a person—

14 “(1) which is required to file periodic reports
15 under section 13 or 15(d) of the Securities Ex-
16 change Act of 1934 or is required to be consolidated
17 with another person for purposes of such reports,
18 and

19 “(2) which—

20 “(A) is required to pay a penalty under
21 this section with respect to a listed transaction,

22 “(B) is required to pay a penalty under
23 section 6662A with respect to any reportable
24 transaction at a rate prescribed under section
25 6662A(c), or

1 “(C) is required to pay a penalty under
2 section 6662B with respect to any noneconomic
3 substance transaction,
4 the requirement to pay such penalty shall be disclosed in
5 such reports filed by such person for such periods as the
6 Secretary shall specify. Failure to make a disclosure in
7 accordance with the preceding sentence shall be treated
8 as a failure to which the penalty under subsection (b)(2)
9 applies.

10 “(f) COORDINATION WITH OTHER PENALTIES.—The
11 penalty imposed by this section is in addition to any pen-
12 alty imposed under this title.”.

13 (b) DISCLOSURE BY SECRETARY.—

14 (1) IN GENERAL.—Section 6103 is amended by
15 redesignating subsection (q) as subsection (r) and by
16 inserting after subsection (p) the following new sub-
17 section:

18 “(q) DISCLOSURE RELATING TO PAYMENTS OF CER-
19 TAIN PENALTIES.—Notwithstanding any other provision
20 of this section, the Secretary shall make public the name
21 of any person required to pay a penalty described in sec-
22 tion 6707A(e)(2) and the amount of the penalty.”.

23 (2) RECORDS.—Section 6103(p)(3)(A) is
24 amended by striking “or (n)” and inserting “(n), or
25 (q)”.

1 (c) CONFORMING AMENDMENT.—The table of sec-
2 tions for part I of subchapter B of chapter 68 is amended
3 by inserting after the item relating to section 6707 the
4 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
information with return or statement.”.

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to returns and statements the due
7 date for which is after the date of the enactment of this
8 Act.

9 **SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED**
10 **TRANSACTIONS AND OTHER REPORTABLE**
11 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
12 **AVOIDANCE PURPOSE.**

13 (a) IN GENERAL.—Subchapter A of chapter 68 is
14 amended by inserting after section 6662 the following new
15 section:

16 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
17 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
18 **TO REPORTABLE TRANSACTIONS.**

19 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
20 reportable transaction understatement for any taxable
21 year, there shall be added to the tax an amount equal to
22 20 percent of the amount of such understatement.

23 “(b) REPORTABLE TRANSACTION UNDERSTATE-
24 MENT.—For purposes of this section—

1 “(1) IN GENERAL.—The term ‘reportable trans-
2 action understatement’ means the sum of—

3 “(A) the product of—

4 “(i) the amount of the increase (if
5 any) in taxable income which results from
6 a difference between the proper tax treat-
7 ment of an item to which this section ap-
8 plies and the taxpayer’s treatment of such
9 item (as shown on the taxpayer’s return of
10 tax), and

11 “(ii) the highest rate of tax imposed
12 by section 1 (section 11 in the case of a
13 taxpayer which is a corporation), and

14 “(B) the amount of the decrease (if any)
15 in the aggregate amount of credits determined
16 under subtitle A which results from a difference
17 between the taxpayer’s treatment of an item to
18 which this section applies (as shown on the tax-
19 payer’s return of tax) and the proper tax treat-
20 ment of such item.

21 For purposes of subparagraph (A), any reduction of
22 the excess of deductions allowed for the taxable year
23 over gross income for such year, and any reduction
24 in the amount of capital losses which would (without

1 regard to section 1211) be allowed for such year,
2 shall be treated as an increase in taxable income.

3 “(2) ITEMS TO WHICH SECTION APPLIES.—This
4 section shall apply to any item which is attributable
5 to—

6 “(A) any listed transaction, and

7 “(B) any reportable transaction (other
8 than a listed transaction) if a significant pur-
9 pose of such transaction is the avoidance or
10 evasion of Federal income tax.

11 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
12 AND OTHER AVOIDANCE TRANSACTIONS.—

13 “(1) IN GENERAL.—Subsection (a) shall be ap-
14 plied by substituting ‘30 percent’ for ‘20 percent’
15 with respect to the portion of any reportable trans-
16 action understatement with respect to which the re-
17 quirement of section 6664(d)(2)(A) is not met.

18 “(2) RULES APPLICABLE TO ASSERTION AND
19 COMPROMISE OF PENALTY.—

20 “(A) IN GENERAL.—Only upon the ap-
21 proval by the Chief Counsel for the Internal
22 Revenue Service or the Chief Counsel’s delegate
23 at the national office of the Internal Revenue
24 Service may a penalty to which paragraph (1)
25 applies be included in a 1st letter of proposed

1 deficiency which allows the taxpayer an oppor-
2 tunity for administrative review in the Internal
3 Revenue Service Office of Appeals. If such a
4 letter is provided to the taxpayer, only the Com-
5 missioner of Internal Revenue may compromise
6 all or any portion of such penalty.

7 “(B) APPLICABLE RULES.—The rules of
8 paragraphs (2), (3), (4), and (5) of section
9 6707A(d) shall apply for purposes of subpara-
10 graph (A).

11 “(d) DEFINITIONS OF REPORTABLE AND LISTED
12 TRANSACTIONS.—For purposes of this section, the terms
13 ‘reportable transaction’ and ‘listed transaction’ have the
14 respective meanings given to such terms by section
15 6707A(e).

16 “(e) SPECIAL RULES.—

17 “(1) COORDINATION WITH PENALTIES, ETC.,
18 ON OTHER UNDERSTATEMENTS.—In the case of an
19 understatement (as defined in section 6662(d)(2))—

20 “(A) the amount of such understatement
21 (determined without regard to this paragraph)
22 shall be increased by the aggregate amount of
23 reportable transaction understatements and
24 noneconomic substance transaction understate-
25 ments for purposes of determining whether

1 such understatement is a substantial under-
2 statement under section 6662(d)(1), and

3 “(B) the addition to tax under section
4 6662(a) shall apply only to the excess of the
5 amount of the substantial understatement (if
6 any) after the application of subparagraph (A)
7 over the aggregate amount of reportable trans-
8 action understatements and noneconomic sub-
9 stance transaction understatements.

10 “(2) COORDINATION WITH OTHER PEN-
11 ALTIES.—

12 “(A) APPLICATION OF FRAUD PENALTY.—
13 References to an underpayment in section 6663
14 shall be treated as including references to a re-
15 portable transaction understatement and a non-
16 economic substance transaction understatement.

17 “(B) NO DOUBLE PENALTY.—This section
18 shall not apply to any portion of an understate-
19 ment on which a penalty is imposed under sec-
20 tion 6662B or 6663.

21 “(3) SPECIAL RULE FOR AMENDED RE-
22 TURNS.—Except as provided in regulations, in no
23 event shall any tax treatment included with an
24 amendment or supplement to a return of tax be
25 taken into account in determining the amount of any

1 reportable transaction understatement or non-
2 economic substance transaction understatement if
3 the amendment or supplement is filed after the ear-
4 lier of the date the taxpayer is first contacted by the
5 Secretary regarding the examination of the return or
6 such other date as is specified by the Secretary.

7 “(4) NONECONOMIC SUBSTANCE TRANS-
8 ACTION UNDERSTATEMENT.—For purposes of
9 this subsection, the term ‘noneconomic sub-
10 stance transaction understatement’ has the
11 meaning given such term by section 6662B(c).

12 “(5) CROSS REFERENCE.—

“**For reporting of section 6662A(c) penalty to the
Securities and Exchange Commission, see section
6707A(e).**”.

13 (b) DETERMINATION OF OTHER UNDERSTATE-
14 MENTS.—Subparagraph (A) of section 6662(d)(2) is
15 amended by adding at the end the following flush sen-
16 tence:

17 “The excess under the preceding sentence shall
18 be determined without regard to items to which
19 section 6662A applies and without regard to
20 items with respect to which a penalty is im-
21 posed by section 6662B.”.

22 (c) REASONABLE CAUSE EXCEPTION.—

23 (1) IN GENERAL.—Section 6664 is amended by
24 adding at the end the following new subsection:

1 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
2 ABLE TRANSACTION UNDERSTATEMENTS.—

3 “(1) IN GENERAL.—No penalty shall be im-
4 posed under section 6662A with respect to any por-
5 tion of a reportable transaction understatement if it
6 is shown that there was a reasonable cause for such
7 portion and that the taxpayer acted in good faith
8 with respect to such portion.

9 “(2) SPECIAL RULES.—Paragraph (1) shall not
10 apply to any reportable transaction understatement
11 unless—

12 “(A) the relevant facts affecting the tax
13 treatment of the item are adequately disclosed
14 in accordance with the regulations prescribed
15 under section 6011,

16 “(B) there is or was substantial authority
17 for such treatment, and

18 “(C) the taxpayer reasonably believed that
19 such treatment was more likely than not the
20 proper treatment.

21 A taxpayer failing to adequately disclose in accord-
22 ance with section 6011 shall be treated as meeting
23 the requirements of subparagraph (A) if the penalty
24 for such failure was rescinded under section
25 6707A(d).

1 “(3) RULES RELATING TO REASONABLE BE-
2 LIEF.—For purposes of paragraph (2)(C)—

3 “(A) IN GENERAL.—A taxpayer shall be
4 treated as having a reasonable belief with re-
5 spect to the tax treatment of an item only if
6 such belief—

7 “(i) is based on the facts and law that
8 exist at the time the return of tax which
9 includes such tax treatment is filed, and

10 “(ii) relates solely to the taxpayer’s
11 chances of success on the merits of such
12 treatment and does not take into account
13 the possibility that a return will not be au-
14 dited, such treatment will not be raised on
15 audit, or such treatment will be resolved
16 through settlement if it is raised.

17 “(B) CERTAIN OPINIONS MAY NOT BE RE-
18 LIED UPON.—

19 “(i) IN GENERAL.—An opinion of a
20 tax advisor may not be relied upon to es-
21 tablish the reasonable belief of a taxpayer
22 if—

23 “(I) the tax advisor is described
24 in clause (ii), or

1 “(II) the opinion is described in
2 clause (iii).

3 “(ii) DISQUALIFIED TAX ADVISORS.—
4 A tax advisor is described in this clause if
5 the tax advisor—

6 “(I) is a material advisor (within
7 the meaning of section 6111(b)(1))
8 who participates in the organization,
9 management, promotion, or sale of
10 the transaction or who is related
11 (within the meaning of section 267(b)
12 or 707(b)(1)) to any person who so
13 participates,

14 “(II) is compensated directly or
15 indirectly by a material advisor with
16 respect to the transaction,

17 “(III) has a fee arrangement
18 with respect to the transaction which
19 is contingent on all or part of the in-
20 tended tax benefits from the trans-
21 action being sustained,

22 “(IV) has an arrangement with
23 respect to the transaction which pro-
24 vides that contractual disputes be-
25 tween the taxpayer and the advisor

1 are to be settled by arbitration or
2 which limits damages by reference to
3 fees paid to the advisor for such
4 transaction, or

5 “(V) as determined under regula-
6 tions prescribed by the Secretary, has
7 a disqualifying financial interest with
8 respect to the transaction.

9 “(iii) DISQUALIFIED OPINIONS.—For
10 purposes of clause (i), an opinion is dis-
11 qualified if the opinion—

12 “(I) is based on unreasonable
13 factual or legal assumptions (includ-
14 ing assumptions as to future events),

15 “(II) unreasonably relies on rep-
16 resentations, statements, findings, or
17 agreements of the taxpayer or any
18 other person,

19 “(III) does not identify and con-
20 sider all relevant facts,

21 “(IV) is not signed by all individ-
22 uals who are principal authors of the
23 opinion, or

1 if a significant purpose of such partnership, en-
2 tity, plan, or arrangement is the avoidance or
3 evasion of Federal income tax.”.

4 (3) Section 6662(d)(2) is amended by striking
5 subparagraphs (C) and (D).

6 (4) Section 6664(c)(1) is amended by striking
7 “this part” and inserting “section 6662 or 6663”.

8 (5) Subsection (b) of section 7525 is amended
9 by striking “section 6662(d)(2)(C)(iii)” and insert-
10 ing “section 1274(b)(3)(C)”.

11 (6)(A) The heading for section 6662 is amend-
12 ed to read as follows:

13 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
14 **ON UNDERPAYMENTS.”.**

15 (B) The table of sections for part II of sub-
16 chapter A of chapter 68 is amended by striking the
17 item relating to section 6662 and inserting the fol-
18 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-
statements with respect to reportable trans-
actions.”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years ending after the
21 date of the enactment of this Act.

1 **SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 (a) IN GENERAL.—Subchapter A of chapter 68 is
5 amended by inserting after section 6662A the following
6 new section:

7 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
8 **UTABLE TO TRANSACTIONS LACKING ECO-**
9 **NOMIC SUBSTANCE, ETC.**

10 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
11 noneconomic substance transaction understatement for
12 any taxable year, there shall be added to the tax an
13 amount equal to 40 percent of the amount of such under-
14 statement.

15 “(b) REDUCTION OF PENALTY FOR DISCLOSED
16 TRANSACTIONS.—Subsection (a) shall be applied by sub-
17 stituting ‘20 percent’ for ‘40 percent’ with respect to the
18 portion of any noneconomic substance transaction under-
19 statement with respect to which the relevant facts affect-
20 ing the tax treatment of the item are adequately disclosed
21 in the return or a statement attached to the return.

22 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
23 DERSTATEMENT.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘noneconomic
25 substance transaction understatement’ means any
26 amount which would be an understatement under

1 section 6662A(b)(1) if section 6662A were applied
2 by taking into account items attributable to non-
3 economic substance transactions rather than items
4 to which section 6662A would apply without regard
5 to this paragraph.

6 “(2) NONECONOMIC SUBSTANCE TRANS-
7 ACTION.—The term ‘noneconomic substance trans-
8 action’ means any transaction if—

9 “(A) there is a lack of economic substance
10 (within the meaning of section 7701(n)(1)) for
11 the transaction giving rise to the claimed ben-
12 efit or the transaction was not respected under
13 section 7701(n)(2), or

14 “(B) the transaction fails to meet the re-
15 quirements of any similar rule of law.

16 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
17 ALTY.—

18 “(1) IN GENERAL.—If the 1st letter of pro-
19 posed deficiency which allows the taxpayer an oppor-
20 tunity for administrative review in the Internal Rev-
21 enue Service Office of Appeals has been sent with
22 respect to a penalty to which this section applies,
23 only the Commissioner of Internal Revenue may
24 compromise all or any portion of such penalty.

1 “(B) SPECIAL RULE FOR CORPORA-
2 TIONS.—In the case of a corporation other than
3 an S corporation or a personal holding company
4 (as defined in section 542), there is a substan-
5 tial understatement of income tax for any tax-
6 able year if the amount of the understatement
7 for the taxable year exceeds the lesser of—

8 “(i) 10 percent of the tax required to
9 be shown on the return for the taxable
10 year (or, if greater, \$10,000), or

11 “(ii) \$10,000,000.”.

12 (b) REDUCTION FOR UNDERSTATEMENT OF TAX-
13 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
14 ITEM.—

15 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
16 (relating to substantial authority) is amended to
17 read as follows:

18 “(i) the tax treatment of any item by
19 the taxpayer if the taxpayer had reason-
20 able belief that the tax treatment was more
21 likely than not the proper treatment, or”.

22 (2) CONFORMING AMENDMENT.—Section
23 6662(d) is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(3) SECRETARIAL LIST.—For purposes of this
2 subsection, section 6664(d)(2), and section
3 6694(a)(1), the Secretary may prescribe a list of po-
4 sitions for which the Secretary believes there is not
5 substantial authority or there is no reasonable belief
6 that the tax treatment is more likely than not the
7 proper tax treatment. Such list (and any revisions
8 thereof) shall be published in the Federal Register
9 or the Internal Revenue Bulletin.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 the date of the enactment of this Act.

13 **SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
14 **PRIVILEGES RELATING TO TAXPAYER COM-**
15 **MUNICATIONS.**

16 (a) IN GENERAL.—Section 7525(b) (relating to sec-
17 tion not to apply to communications regarding corporate
18 tax shelters) is amended to read as follows:

19 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
20 REGARDING TAX SHELTERS.—The privilege under sub-
21 section (a) shall not apply to any written communication
22 which is—

23 “(1) between a federally authorized tax practi-
24 tioner and—

25 “(A) any person,

1 “(B) any director, officer, employee, agent,
2 or representative of the person, or

3 “(C) any other person holding a capital or
4 profits interest in the person, and

5 “(2) in connection with the promotion of the di-
6 rect or indirect participation of the person in any
7 tax shelter (as defined in section 1274(b)(3)(C)).”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 this section shall apply to communications made on or
10 after the date of the enactment of this Act.

11 **SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

12 (a) **IN GENERAL.**—Section 6111 (relating to registra-
13 tion of tax shelters) is amended to read as follows:

14 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

15 “(a) **IN GENERAL.**—Each material advisor with re-
16 spect to any reportable transaction shall make a return
17 (in such form as the Secretary may prescribe) setting
18 forth—

19 “(1) information identifying and describing the
20 transaction,

21 “(2) information describing any potential tax
22 benefits expected to result from the transaction, and

23 “(3) such other information as the Secretary
24 may prescribe.

1 Such return shall be filed not later than the date specified
2 by the Secretary.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) MATERIAL ADVISOR.—

5 “(A) IN GENERAL.—The term ‘material
6 advisor’ means any person—

7 “(i) who provides any material aid,
8 assistance, or advice with respect to orga-
9 nizing, managing, promoting, selling, im-
10 plementing, or carrying out any reportable
11 transaction, and

12 “(ii) who directly or indirectly derives
13 gross income in excess of the threshold
14 amount for such aid, assistance, or advice.

15 “(B) THRESHOLD AMOUNT.—For purposes
16 of subparagraph (A), the threshold amount is—

17 “(i) \$50,000 in the case of a report-
18 able transaction substantially all of the tax
19 benefits from which are provided to nat-
20 ural persons, and

21 “(ii) \$250,000 in any other case.

22 “(2) REPORTABLE TRANSACTION.—The term
23 ‘reportable transaction’ has the meaning given to
24 such term by section 6707A(c).

1 “(c) REGULATIONS.—The Secretary may prescribe
2 regulations which provide—

3 “(1) that only 1 person shall be required to
4 meet the requirements of subsection (a) in cases in
5 which 2 or more persons would otherwise be re-
6 quired to meet such requirements,

7 “(2) exemptions from the requirements of this
8 section, and

9 “(3) such rules as may be necessary or appro-
10 priate to carry out the purposes of this section.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) The item relating to section 6111 in the
13 table of sections for subchapter B of chapter 61 is
14 amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”.

15 (2)(A) So much of section 6112 as precedes
16 subsection (c) thereof is amended to read as follows:

17 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
18 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

19 “(a) IN GENERAL.—Each material advisor (as de-
20 fined in section 6111) with respect to any reportable
21 transaction (as defined in section 6707A(e)) shall main-
22 tain, in such manner as the Secretary may by regulations
23 prescribe, a list—

1 “(1) identifying each person with respect to
2 whom such advisor acted as such a material advisor
3 with respect to such transaction, and

4 “(2) containing such other information as the
5 Secretary may by regulations require.

6 This section shall apply without regard to whether a mate-
7 rial advisor is required to file a return under section 6111
8 with respect to such transaction.”.

9 (B) Section 6112 is amended by redesignating
10 subsection (c) as subsection (b).

11 (C) Section 6112(b), as redesignated by sub-
12 paragraph (B), is amended—

13 (i) by inserting “written” before “request”
14 in paragraph (1)(A), and

15 (ii) by striking “shall prescribe” in para-
16 graph (2) and inserting “may prescribe”.

17 (D) The item relating to section 6112 in the
18 table of sections for subchapter B of chapter 61 is
19 amended to read as follows:

 “Sec. 6112. Material advisors of reportable transactions must
 keep lists of advisees.”.

20 (3)(A) The heading for section 6708 is amend-
21 ed to read as follows:

1 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
2 **WITH RESPECT TO REPORTABLE TRANS-**
3 **ACTIONS.”.**

4 (B) The item relating to section 6708 in the
5 table of sections for part I of subchapter B of chap-
6 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to
reportable transactions.”.

7 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**
8 **OF CONFIDENTIALITY.**—Subparagraph (A) of section
9 6112(b)(1), as redesignated by subsection (b)(2)(B), is
10 amended by adding at the end the following new flush sen-
11 tence:

12 “For purposes of this section, the identity of any
13 person on such list shall not be privileged.”.

14 (d) **EFFECTIVE DATE.**—

15 (1) **IN GENERAL.**—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to transactions with respect to which ma-
18 terial aid, assistance, or advice referred to in section
19 6111(b)(1)(A)(i) of the Internal Revenue Code of
20 1986 (as added by this section) is provided after the
21 date of the enactment of this Act.

22 (2) **NO CLAIM OF CONFIDENTIALITY AGAINST**
23 **DISCLOSURE.**—The amendment made by subsection
24 (c) shall take effect as if included in the amend-

1 ments made by section 142 of the Deficit Reduction
2 Act of 1984.

3 **SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO**
4 **REGISTER TAX SHELTERS.**

5 (a) IN GENERAL.—Section 6707 (relating to failure
6 to furnish information regarding tax shelters) is amended
7 to read as follows:

8 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
9 **ING REPORTABLE TRANSACTIONS.**

10 “(a) IN GENERAL.—If a person who is required to
11 file a return under section 6111(a) with respect to any
12 reportable transaction—

13 “(1) fails to file such return on or before the
14 date prescribed therefor, or

15 “(2) files false or incomplete information with
16 the Secretary with respect to such transaction,
17 such person shall pay a penalty with respect to such return
18 in the amount determined under subsection (b).

19 “(b) AMOUNT OF PENALTY.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), the penalty imposed under subsection (a)
22 with respect to any failure shall be \$50,000.

23 “(2) LISTED TRANSACTIONS.—The penalty im-
24 posed under subsection (a) with respect to any listed

1 transaction shall be an amount equal to the greater
2 of—

3 “(A) \$200,000, or

4 “(B) 50 percent of the gross income de-
5 rived by such person with respect to aid, assist-
6 ance, or advice which is provided with respect
7 to the listed transaction before the date the re-
8 turn including the transaction is filed under
9 section 6111.

10 Subparagraph (B) shall be applied by substituting
11 ‘75 percent’ for ‘50 percent’ in the case of an inten-
12 tional failure or act described in subsection (a).

13 “(c) CERTAIN RULES TO APPLY.—The provisions of
14 section 6707A(d) shall apply to any penalty imposed under
15 this section.

16 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
17 The terms ‘reportable transaction’ and ‘listed transaction’
18 have the respective meanings given to such terms by sec-
19 tion 6707A(c).”.

20 (b) CLERICAL AMENDMENT.—The item relating to
21 section 6707 in the table of sections for part I of sub-
22 chapter B of chapter 68 is amended by striking “tax shel-
23 ters” and inserting “reportable transactions”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to returns the due date for which
3 is after the date of the enactment of this Act.

4 **SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

6 (a) IN GENERAL.—Subsection (a) of section 6708 is
7 amended to read as follows:

8 “(a) IMPOSITION OF PENALTY.—

9 “(1) IN GENERAL.—If any person who is re-
10 quired to maintain a list under section 6112(a) fails
11 to make such list available upon written request to
12 the Secretary in accordance with section
13 6112(b)(1)(A) within 20 business days after the
14 date of the Secretary’s request, such person shall
15 pay a penalty of \$10,000 for each day of such fail-
16 ure after such 20th day.

17 “(2) REASONABLE CAUSE EXCEPTION.—No
18 penalty shall be imposed by paragraph (1) with re-
19 spect to the failure on any day if such failure is due
20 to reasonable cause.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to requests made after the date
23 of the enactment of this Act.

1 **SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
2 **CONDUCT RELATED TO TAX SHELTERS AND**
3 **REPORTABLE TRANSACTIONS.**

4 (a) IN GENERAL.—Section 7408 (relating to action
5 to enjoin promoters of abusive tax shelters, etc.) is amend-
6 ed by redesignating subsection (c) as subsection (d) and
7 by striking subsections (a) and (b) and inserting the fol-
8 lowing new subsections:

9 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
10 tion in the name of the United States to enjoin any person
11 from further engaging in specified conduct may be com-
12 menced at the request of the Secretary. Any action under
13 this section shall be brought in the district court of the
14 United States for the district in which such person resides,
15 has his principal place of business, or has engaged in spec-
16 ified conduct. The court may exercise its jurisdiction over
17 such action (as provided in section 7402(a)) separate and
18 apart from any other action brought by the United States
19 against such person.

20 “(b) ADJUDICATION AND DECREE.—In any action
21 under subsection (a), if the court finds—

22 “(1) that the person has engaged in any speci-
23 fied conduct, and

24 “(2) that injunctive relief is appropriate to pre-
25 vent recurrence of such conduct,

1 the court may enjoin such person from engaging in such
2 conduct or in any other activity subject to penalty under
3 this title.

4 “(c) SPECIFIED CONDUCT.—For purposes of this
5 section, the term ‘specified conduct’ means any action, or
6 failure to take action, which is—

7 “(1) subject to penalty under section 6700,
8 6701, 6707, or 6708, or

9 “(2) in violation of any requirement under reg-
10 ulations issued under section 320 of title 31, United
11 States Code.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 7408 is amended to
14 read as follows:

15 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
16 **LATED TO TAX SHELTERS AND REPORTABLE**
17 **TRANSACTIONS.”.**

18 (2) The table of sections for subchapter A of
19 chapter 67 is amended by striking the item relating
20 to section 7408 and inserting the following new
21 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and
reportable transactions.”.

22 (c) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the day after the date of
24 the enactment of this Act.

1 **SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY**
2 **INCOME TAX RETURN PREPARER.**

3 (a) STANDARDS CONFORMED TO TAXPAYER STAND-
4 ARDS.—Section 6694(a) (relating to understatements due
5 to unrealistic positions) is amended—

6 (1) by striking “realistic possibility of being
7 sustained on its merits” in paragraph (1) and in-
8 serting “reasonable belief that the tax treatment in
9 such position was more likely than not the proper
10 treatment”,

11 (2) by striking “or was frivolous” in paragraph
12 (3) and inserting “or there was no reasonable basis
13 for the tax treatment of such position”, and

14 (3) by striking “UNREALISTIC” in the heading
15 and inserting “IMPROPER”.

16 (b) AMOUNT OF PENALTY.—Section 6694 is
17 amended—

18 (1) by striking “\$250” in subsection (a) and in-
19 serting “\$1,000”, and

20 (2) by striking “\$1,000” in subsection (b) and
21 inserting “\$5,000”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to documents prepared after the
24 date of the enactment of this Act.

1 **SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN**
2 **FOREIGN FINANCIAL ACCOUNTS.**

3 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
4 United States Code, is amended to read as follows:

5 “(5) FOREIGN FINANCIAL AGENCY TRANS-
6 ACTION VIOLATION.—

7 “(A) PENALTY AUTHORIZED.—The Sec-
8 retary of the Treasury may impose a civil
9 money penalty on any person who violates, or
10 causes any violation of, any provision of section
11 5314.

12 “(B) AMOUNT OF PENALTY.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in subparagraph (C), the amount of
15 any civil penalty imposed under subpara-
16 graph (A) shall not exceed \$10,000.

17 “(ii) REASONABLE CAUSE EXCEP-
18 TION.—No penalty shall be imposed under
19 subparagraph (A) with respect to any vio-
20 lation if—

21 “(I) such violation was due to
22 reasonable cause, and

23 “(II) the amount of the trans-
24 action or the balance in the account
25 at the time of the transaction was
26 properly reported.

1 “(C) WILLFUL VIOLATIONS.—In the case
2 of any person willfully violating, or willfully
3 causing any violation of, any provision of sec-
4 tion 5314—

5 “(i) the maximum penalty under sub-
6 paragraph (B)(i) shall be increased to the
7 greater of—

8 “(I) \$100,000, or

9 “(II) 50 percent of the amount
10 determined under subparagraph (D),
11 and

12 “(ii) subparagraph (B)(ii) shall not
13 apply.

14 “(D) AMOUNT.—The amount determined
15 under this subparagraph is—

16 “(i) in the case of a violation involving
17 a transaction, the amount of the trans-
18 action, or

19 “(ii) in the case of a violation involv-
20 ing a failure to report the existence of an
21 account or any identifying information re-
22 quired to be provided with respect to an
23 account, the balance in the account at the
24 time of the violation.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to violations occurring after the
3 date of the enactment of this Act.

4 **SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

5 (a) CIVIL PENALTIES.—Section 6702 is amended to
6 read as follows:

7 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

8 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
9 TURNS.—A person shall pay a penalty of \$5,000 if—

10 “(1) such person files what purports to be a re-
11 turn of a tax imposed by this title but which—

12 “(A) does not contain information on
13 which the substantial correctness of the self-as-
14 sessment may be judged, or

15 “(B) contains information that on its face
16 indicates that the self-assessment is substan-
17 tially incorrect; and

18 “(2) the conduct referred to in paragraph (1)—

19 “(A) is based on a position which the Sec-
20 retary has identified as frivolous under sub-
21 section (c), or

22 “(B) reflects a desire to delay or impede
23 the administration of Federal tax laws.

24 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
25 SUBMISSIONS.—

1 “(1) IMPOSITION OF PENALTY.—Except as pro-
2 vided in paragraph (3), any person who submits a
3 specified frivolous submission shall pay a penalty of
4 \$5,000.

5 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
6 purposes of this section—

7 “(A) SPECIFIED FRIVOLOUS SUBMIS-
8 SION.—The term ‘specified frivolous submis-
9 sion’ means a specified submission if any por-
10 tion of such submission—

11 “(i) is based on a position which the
12 Secretary has identified as frivolous under
13 subsection (c), or

14 “(ii) reflects a desire to delay or im-
15 pede the administration of Federal tax
16 laws.

17 “(B) SPECIFIED SUBMISSION.—The term
18 ‘specified submission’ means—

19 “(i) a request for a hearing under—

20 “(I) section 6320 (relating to no-
21 tice and opportunity for hearing upon
22 filing of notice of lien), or

23 “(II) section 6330 (relating to
24 notice and opportunity for hearing be-
25 fore levy), and

1 “(ii) an application under—

2 “(I) section 6159 (relating to
3 agreements for payment of tax liabil-
4 ity in installments),

5 “(II) section 7122 (relating to
6 compromises), or

7 “(III) section 7811 (relating to
8 taxpayer assistance orders).

9 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
10 SION.—If the Secretary provides a person with no-
11 tice that a submission is a specified frivolous sub-
12 mission and such person withdraws such submission
13 within 30 days after such notice, the penalty im-
14 posed under paragraph (1) shall not apply with re-
15 spect to such submission.

16 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
17 retary shall prescribe (and periodically revise) a list of po-
18 sitions which the Secretary has identified as being frivo-
19 lous for purposes of this subsection. The Secretary shall
20 not include in such list any position that the Secretary
21 determines meets the requirement of section
22 6662(d)(2)(B)(ii)(II).

23 “(d) REDUCTION OF PENALTY.—The Secretary may
24 reduce the amount of any penalty imposed under this sec-
25 tion if the Secretary determines that such reduction would

1 promote compliance with and administration of the Fed-
2 eral tax laws.

3 “(e) PENALTIES IN ADDITION TO OTHER PEN-
4 ALTIES.—The penalties imposed by this section shall be
5 in addition to any other penalty provided by law.”.

6 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
7 HEARINGS BEFORE LEVY.—

8 (1) FRIVOLOUS REQUESTS DISREGARDED.—

9 Section 6330 (relating to notice and opportunity for
10 hearing before levy) is amended by adding at the
11 end the following new subsection:

12 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—

13 Notwithstanding any other provision of this section, if the
14 Secretary determines that any portion of a request for a
15 hearing under this section or section 6320 meets the re-
16 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
17 then the Secretary may treat such portion as if it were
18 never submitted and such portion shall not be subject to
19 any further administrative or judicial review.”.

20 (2) PRECLUSION FROM RAISING FRIVOLOUS

21 ISSUES AT HEARING.—Section 6330(c)(4) is
22 amended—

23 (A) by striking “(A)” and inserting
24 “(A)(i)”;

25 (B) by striking “(B)” and inserting “(ii)”;

1 (C) by striking the period at the end of the
2 first sentence and inserting “; or”; and

3 (D) by inserting after subparagraph (A)(ii)
4 (as so redesignated) the following:

5 “(B) the issue meets the requirement of
6 clause (i) or (ii) of section 6702(b)(2)(A).”.

7 (3) STATEMENT OF GROUNDS.—Section
8 6330(b)(1) is amended by striking “under sub-
9 section (a)(3)(B)” and inserting “in writing under
10 subsection (a)(3)(B) and states the grounds for the
11 requested hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
13 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
14 6320 is amended—

15 (1) in subsection (b)(1), by striking “under sub-
16 section (a)(3)(B)” and inserting “in writing under
17 subsection (a)(3)(B) and states the grounds for the
18 requested hearing”, and

19 (2) in subsection (c), by striking “and (e)” and
20 inserting “(e), and (g)”.

21 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
22 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
23 MENTS.—Section 7122 is amended by adding at the end
24 the following new subsection:

1 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-
2 standing any other provision of this section, if the Sec-
3 retary determines that any portion of an application for
4 an offer-in-compromise or installment agreement sub-
5 mitted under this section or section 6159 meets the re-
6 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
7 then the Secretary may treat such portion as if it were
8 never submitted and such portion shall not be subject to
9 any further administrative or judicial review.”.

10 (e) CLERICAL AMENDMENT.—The table of sections
11 for part I of subchapter B of chapter 68 is amended by
12 striking the item relating to section 6702 and inserting
13 the following new item:

 “Sec. 6702. Frivolous tax submissions.”.

14 (f) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to submissions made and issues
16 raised after the date on which the Secretary first pre-
17 scribes a list under section 6702(e) of the Internal Rev-
18 enue Code of 1986, as amended by subsection (a).

19 **SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BE-**
20 **FORE THE DEPARTMENT OF TREASURY.**

21 (a) CENSURE; IMPOSITION OF PENALTY.—

22 (1) IN GENERAL.—Section 330(b) of title 31,
23 United States Code, is amended—

24 (A) by inserting “, or censure,” after “De-
25 partment”, and

1 (B) by adding at the end the following new
2 flush sentence:

3 “The Secretary may impose a monetary penalty on any
4 representative described in the preceding sentence. If the
5 representative was acting on behalf of an employer or any
6 firm or other entity in connection with the conduct giving
7 rise to such penalty, the Secretary may impose a monetary
8 penalty on such employer, firm, or entity if it knew, or
9 reasonably should have known, of such conduct. Such pen-
10 alty shall not exceed the gross income derived (or to be
11 derived) from the conduct giving rise to the penalty and
12 may be in addition to, or in lieu of, any suspension, disbar-
13 ment, or censure of the representative.”.

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to actions taken after
16 the date of the enactment of this Act.

17 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
18 such title 31 is amended by adding at the end the fol-
19 lowing new subsection:

20 “(d) Nothing in this section or in any other provision
21 of law shall be construed to limit the authority of the Sec-
22 retary of the Treasury to impose standards applicable to
23 the rendering of written advice with respect to any entity,
24 transaction plan or arrangement, or other plan or arrange-

1 ment, which is of a type which the Secretary determines
2 as having a potential for tax avoidance or evasion.”.

3 **SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.**

4 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
5 TERS.—Section 6700(a) is amended by adding at the end
6 the following new sentence: “Notwithstanding the first
7 sentence, if an activity with respect to which a penalty
8 imposed under this subsection involves a statement de-
9 scribed in paragraph (2)(A), the amount of the penalty
10 shall be equal to 50 percent of the gross income derived
11 (or to be derived) from such activity by the person on
12 which the penalty is imposed.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to activities after the date of the
15 enactment of this Act.

16 **SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
17 **FOR WHICH REQUIRED LISTED TRANS-**
18 **ACTIONS NOT REPORTED.**

19 (a) IN GENERAL.—Section 6501(c) (relating to ex-
20 ceptions) is amended by adding at the end the following
21 new paragraph:

22 “(10) LISTED TRANSACTIONS.—If a taxpayer
23 fails to include on any return or statement for any
24 taxable year any information with respect to a listed
25 transaction (as defined in section 6707A(c)(2))

1 which is required under section 6011 to be included
2 with such return or statement, the time for assess-
3 ment of any tax imposed by this title with respect
4 to such transaction shall not expire before the date
5 which is 1 year after the earlier of—

6 “(A) the date on which the Secretary is
7 furnished the information so required; or

8 “(B) the date that a material advisor (as
9 defined in section 6111) meets the requirements
10 of section 6112 with respect to a request by the
11 Secretary under section 6112(b) relating to
12 such transaction with respect to such tax-
13 payer.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years with respect to
16 which the period for assessing a deficiency did not expire
17 before the date of the enactment of this Act.

18 **SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
19 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
20 **CLOSED REPORTABLE AND NONECONOMIC**
21 **SUBSTANCE TRANSACTIONS.**

22 (a) IN GENERAL.—Section 163 (relating to deduction
23 for interest) is amended by redesignating subsection (m)
24 as subsection (n) and by inserting after subsection (l) the
25 following new subsection:

1 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
2 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND
3 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-
4 tion shall be allowed under this chapter for any interest
5 paid or accrued under section 6601 on any underpayment
6 of tax which is attributable to—

7 “(1) the portion of any reportable transaction
8 understatement (as defined in section 6662A(b))
9 with respect to which the requirement of section
10 6664(d)(2)(A) is not met, or

11 “(2) any noneconomic substance transaction
12 understatement (as defined in section 6662B(c)).”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to transactions in taxable years
15 beginning after the date of the enactment of this Act.

16 **SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX**
17 **LAW ENFORCEMENT.**

18 There is authorized to be appropriated \$300,000,000
19 for each fiscal year beginning after September 30, 2003,
20 for the purpose of carrying out tax law enforcement to
21 combat tax avoidance transactions and other tax shelters,
22 including the use of offshore financial accounts to conceal
23 taxable income.

1 **SEC. 419. INCREASES IN PENALTIES FOR AIDING AND ABET-**
2 **TING UNDERSTATEMENTS.**

3 (a) IN GENERAL.—Section 6701(b) is amended to
4 read as follows:

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—The amount of the penalty
7 imposed by subsection (a) shall be the greater of—

8 “(A) \$2,000, or

9 “(B) 50 percent of the gross income de-
10 rived (or to be derived) from the activity giving
11 rise to the penalty.

12 “(2) CORPORATIONS.—If the return, affidavit,
13 claim, or other document relates to the tax liability
14 of a corporation, paragraph (1)(A) shall be applied
15 by substituting ‘\$20,000’ for ‘\$2,000.’”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to activities after the date of the
18 enactment of this Act.

19 **SEC. 420. STUDY ON INFORMATION SHARING AMONG LAW**
20 **ENFORCEMENT AGENCIES.**

21 (a) STUDY.—The Secretary of the Treasury shall,
22 jointly with the Attorney General, the Securities and Ex-
23 change Commission, and the Commissioner of Internal
24 Revenue, study the effectiveness of, and ways to improve,
25 the sharing of information related to the promotion of pro-

1 hibited tax shelters or tax avoidance schemes and other
2 potential violations of Federal laws.

3 (b) REPORT.—The Secretary shall, not later than 1
4 year after the date of the enactment of this Act, report
5 to the appropriate committees of the Congress the results
6 of the study under subsection (a), including any rec-
7 ommendations for legislation.

8 **Subtitle B—Other Corporate** 9 **Governance Provisions**

10 **SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGU-** 11 **LATION AUTHORITY.**

12 (a) IN GENERAL.—Section 1502 (relating to consoli-
13 dated return regulations) is amended by adding at the end
14 the following new sentence: “In prescribing such regula-
15 tions, the Secretary may prescribe rules applicable to cor-
16 porations filing consolidated returns under section 1501
17 that are different from other provisions of this title that
18 would apply if such corporations filed separate returns.”.

19 (b) RESULT NOT OVERTURNED.—Notwithstanding
20 subsection (a), the Internal Revenue Code of 1986 shall
21 be construed by treating Treasury regulation § 1.1502-
22 20(c)(1)(iii) (as in effect on January 1, 2001) as being
23 inapplicable to the type of factual situation in 255 F.3d
24 1357 (Fed. Cir. 2001).

1 (c) EFFECTIVE DATE.—The provisions of this section
2 shall apply to taxable years beginning before, on, or after
3 the date of the enactment of this Act.

4 **SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER**
5 **RELATING TO FEDERAL ANNUAL INCOME**
6 **TAX RETURN OF A CORPORATION.**

7 (a) IN GENERAL.—The Federal annual tax return of
8 a corporation with respect to income shall also include a
9 declaration signed by the chief executive officer of such
10 corporation (or other such officer of the corporation as
11 the Secretary of the Treasury may designate if the cor-
12 poration does not have a chief executive officer), under
13 penalties of perjury, that the corporation has in place
14 processes and procedures to ensure that such return com-
15 plies with the Internal Revenue Code of 1986 and that
16 the chief executive officer was provided reasonable assur-
17 ance of the accuracy of all material aspects of such return.
18 The preceding sentence shall not apply to any return of
19 a regulated investment company (within the meaning of
20 section 851 of such Code).

21 (b) EFFECTIVE DATE.—This section shall apply to
22 the Federal annual tax return of a corporation with re-
23 spect to income for taxable years ending after the date
24 of the enactment of this Act.

1 **SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES,**
2 **PENALTIES, AND OTHER AMOUNTS.**

3 (a) IN GENERAL.—Subsection (f) of section 162 (re-
4 lating to trade or business expenses) is amended to read
5 as follows:

6 “(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), no deduction otherwise allowable shall be
9 allowed under this chapter for any amount paid or
10 incurred (whether by suit, agreement, or otherwise)
11 to, or at the direction of, a government or entity de-
12 scribed in paragraph (4) in relation to the violation
13 of any law or the investigation or inquiry by such
14 government or entity into the potential violation of
15 any law.

16 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
17 RESTITUTION.—Paragraph (1) shall not apply to
18 any amount which the taxpayer establishes con-
19 stitutes restitution (including remediation of prop-
20 erty) for damage or harm caused by or which may
21 be caused by the violation of any law or the potential
22 violation of any law. This paragraph shall not apply
23 to any amount paid or incurred as reimbursement to
24 the government or entity for the costs of any inves-
25 tigation or litigation.

1 “(3) EXCEPTION FOR AMOUNTS PAID OR IN-
2 CURRED AS THE RESULT OF CERTAIN COURT OR-
3 DERS.—Paragraph (1) shall not apply to any
4 amount paid or incurred by order of a court in a
5 suit in which no government or entity described in
6 paragraph (4) is a party.

7 “(4) CERTAIN NONGOVERNMENTAL REGU-
8 LATORY ENTITIES.—An entity is described in this
9 paragraph if it is—

10 “(A) a nongovernmental entity which exer-
11 cises self-regulatory powers (including imposing
12 sanctions) in connection with a qualified board
13 or exchange (as defined in section 1256(g)(7)),
14 or

15 “(B) to the extent provided in regulations,
16 a nongovernmental entity which exercises self-
17 regulatory powers (including imposing sanc-
18 tions) as part of performing an essential gov-
19 ernmental function.

20 “(5) EXCEPTION FOR TAXES DUE.—Paragraph
21 (1) shall not apply to any amount paid or incurred
22 as taxes due.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to amounts paid or incurred after
25 April 27, 2003, except that such amendment shall not

1 apply to amounts paid or incurred under any binding
2 order or agreement entered into on or before April 27,
3 2003. Such exception shall not apply to an order or agree-
4 ment requiring court approval unless the approval was ob-
5 tained on or before April 27, 2003.

6 **SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE**
7 **DAMAGES.**

8 (a) DISALLOWANCE OF DEDUCTION.—

9 (1) IN GENERAL.—Section 162(g) (relating to
10 treble damage payments under the antitrust laws) is
11 amended by adding at the end the following new
12 paragraph:

13 “(2) PUNITIVE DAMAGES.—No deduction shall
14 be allowed under this chapter for any amount paid
15 or incurred for punitive damages in connection with
16 any judgment in, or settlement of, any action. This
17 paragraph shall not apply to punitive damages de-
18 scribed in section 104(c).”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 162(g) is amended—

21 (i) by striking “If” and inserting:

22 “(1) TREBLE DAMAGES.—If”, and

23 (ii) by redesignating paragraphs (1)
24 and (2) as subparagraphs (A) and (B), re-
25 spectively.

1 (B) The heading for section 162(g) is
2 amended by inserting “OR PUNITIVE DAM-
3 AGES” after “LAWS”.

4 (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES
5 PAID BY INSURER OR OTHERWISE.—

6 (1) IN GENERAL.—Part II of subchapter B of
7 chapter 1 (relating to items specifically included in
8 gross income) is amended by adding at the end the
9 following new section:

10 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
11 **ANCE OR OTHERWISE.**

12 “Gross income shall include any amount paid to or
13 on behalf of a taxpayer as insurance or otherwise by rea-
14 son of the taxpayer’s liability (or agreement) to pay puni-
15 tive damages.”.

16 (2) REPORTING REQUIREMENTS.—Section 6041
17 (relating to information at source) is amended by
18 adding at the end the following new subsection:

19 “(f) SECTION TO APPLY TO PUNITIVE DAMAGES
20 COMPENSATION.—This section shall apply to payments by
21 a person to or on behalf of another person as insurance
22 or otherwise by reason of the other person’s liability (or
23 agreement) to pay punitive damages.”.

24 (3) CONFORMING AMENDMENT.—The table of
25 sections for part II of subchapter B of chapter 1 is

1 amended by adding at the end the following new
2 item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to damages paid or incurred on
5 or after the date of the enactment of this Act.

6 **SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY**
7 **LIMITATION FOR THE UNDERPAYMENT OR**
8 **OVERPAYMENT OF TAX DUE TO FRAUD.**

9 (a) IN GENERAL.—Section 7206 (relating to fraud
10 and false statements) is amended—

11 (1) by striking “Any person who—” and insert-
12 ing “(a) IN GENERAL.—Any person who—”, and

13 (2) by adding at the end the following new sub-
14 section:

15 “(b) INCREASE IN MONETARY LIMITATION FOR UN-
16 DERPAYMENT OR OVERPAYMENT OF TAX DUE TO
17 FRAUD.—If any portion of any underpayment (as defined
18 in section 6664(a)) or overpayment (as defined in section
19 6401(a)) of tax required to be shown on a return is attrib-
20 utable to fraudulent action described in subsection (a), the
21 applicable dollar amount under subsection (a) shall in no
22 event be less than an amount equal to such portion. A
23 rule similar to the rule under section 6663(b) shall apply
24 for purposes of determining the portion so attributable.”.

25 (b) INCREASE IN PENALTIES.—

1 (1) ATTEMPT TO EVADE OR DEFEAT TAX.—

2 Section 7201 is amended—

3 (A) by striking “\$100,000” and inserting
4 “\$250,000”,

5 (B) by striking “\$500,000” and inserting
6 “\$1,000,000”, and

7 (C) by striking “5 years” and inserting
8 “10 years”.

9 (2) WILLFUL FAILURE TO FILE RETURN, SUP-
10 PLY INFORMATION, OR PAY TAX.—Section 7203 is
11 amended—

12 (A) in the first sentence—

13 (i) by striking “misdemeanor” and in-
14 serting “felony”, and

15 (ii) by striking “1 year” and inserting
16 “10 years”, and

17 (B) by striking the third sentence.

18 (3) FRAUD AND FALSE STATEMENTS.—Section
19 7206(a) (as redesignated by subsection (a)) is
20 amended—

21 (A) by striking “\$100,000” and inserting
22 “\$250,000”,

23 (B) by striking “\$500,000” and inserting
24 “\$1,000,000”, and

1 (C) by striking “3 years” and inserting “5
2 years”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to underpayments and overpay-
5 ments attributable to actions occurring after the date of
6 the enactment of this Act.

7 **Subtitle C—Enron-Related Tax**
8 **Shelter Provisions**

9 **SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF**
10 **BUILT-IN LOSSES.**

11 (a) IN GENERAL.—Section 362 (relating to basis to
12 corporations) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

15 “(1) LIMITATION ON IMPORTATION OF BUILT-
16 IN LOSSES.—

17 “(A) IN GENERAL.—If in any transaction
18 described in subsection (a) or (b) there would
19 (but for this subsection) be an importation of a
20 net built-in loss, the basis of each property de-
21 scribed in subparagraph (B) which is acquired
22 in such transaction shall (notwithstanding sub-
23 sections (a) and (b)) be its fair market value
24 immediately after such transaction.

1 “(B) PROPERTY DESCRIBED.—For pur-
2 poses of subparagraph (A), property is de-
3 scribed in this subparagraph if—

4 “(i) gain or loss with respect to such
5 property is not subject to tax under this
6 subtitle in the hands of the transferor im-
7 mediately before the transfer, and

8 “(ii) gain or loss with respect to such
9 property is subject to such tax in the
10 hands of the transferee immediately after
11 such transfer.

12 In any case in which the transferor is a part-
13 nership, the preceding sentence shall be applied
14 by treating each partner in such partnership as
15 holding such partner’s proportionate share of
16 the property of such partnership.

17 “(C) IMPORTATION OF NET BUILT-IN
18 LOSS.—For purposes of subparagraph (A),
19 there is an importation of a net built-in loss in
20 a transaction if the transferee’s aggregate ad-
21 justed bases of property described in subpara-
22 graph (B) which is transferred in such trans-
23 action would (but for this paragraph) exceed
24 the fair market value of such property imme-
25 diately after such transaction.

1 “(2) LIMITATION ON TRANSFER OF BUILT-IN
2 LOSSES IN SECTION 351 TRANSACTIONS.—

3 “(A) IN GENERAL.—If—

4 “(i) property is transferred by a
5 transferor in any transaction which is de-
6 scribed in subsection (a) and which is not
7 described in paragraph (1) of this sub-
8 section, and

9 “(ii) the transferee’s aggregate ad-
10 justed bases of such property so trans-
11 ferred would (but for this paragraph) ex-
12 ceed the fair market value of such property
13 immediately after such transaction,

14 then, notwithstanding subsection (a), the trans-
15 feree’s aggregate adjusted bases of the property
16 so transferred shall not exceed the fair market
17 value of such property immediately after such
18 transaction.

19 “(B) ALLOCATION OF BASIS REDUC-
20 TION.—The aggregate reduction in basis by
21 reason of subparagraph (A) shall be allocated
22 among the property so transferred in proportion
23 to their respective built-in losses immediately
24 before the transaction.

1 “(C) EXCEPTION FOR TRANSFERS WITHIN
2 AFFILIATED GROUP.—Subparagraph (A) shall
3 not apply to any transaction if the transferor
4 owns stock in the transferee meeting the re-
5 quirements of section 1504(a)(2). In the case of
6 property to which subparagraph (A) does not
7 apply by reason of the preceding sentence, the
8 transferor’s basis in the stock received for such
9 property shall not exceed its fair market value
10 immediately after the transfer.”.

11 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
12 TION.—Paragraph (1) of section 334(b) (relating to liq-
13 uidation of subsidiary) is amended to read as follows:

14 “(1) IN GENERAL.—If property is received by a
15 corporate distributee in a distribution in a complete
16 liquidation to which section 332 applies (or in a
17 transfer described in section 337(b)(1)), the basis of
18 such property in the hands of such distributee shall
19 be the same as it would be in the hands of the trans-
20 feror; except that the basis of such property in the
21 hands of such distributee shall be the fair market
22 value of the property at the time of the
23 distribution—

1 “(A) in any case in which gain or loss is
2 recognized by the liquidating corporation with
3 respect to such property, or

4 “(B) in any case in which the liquidating
5 corporation is a foreign corporation, the cor-
6 porate distributee is a domestic corporation,
7 and the corporate distributee’s aggregate ad-
8 justed bases of property described in section
9 362(e)(1)(B) which is distributed in such liq-
10 uidation would (but for this subparagraph) ex-
11 ceed the fair market value of such property im-
12 mediately after such liquidation.”.

13 (c) EFFECTIVE DATES.—

14 (1) IN GENERAL.—The amendment made by
15 subsection (a) shall apply to transactions after Feb-
16 ruary 13, 2003.

17 (2) LIQUIDATIONS.—The amendment made by
18 subsection (b) shall apply to liquidations after Feb-
19 ruary 13, 2003.

20 **SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
21 **STOCK HELD BY PARTNERSHIP IN COR-**
22 **PORATE PARTNER.**

23 (a) IN GENERAL.—Section 755 is amended by adding
24 at the end the following new subsection:

1 “(c) NO ALLOCATION OF BASIS DECREASE TO
2 STOCK OF CORPORATE PARTNER.—In making an alloca-
3 tion under subsection (a) of any decrease in the adjusted
4 basis of partnership property under section 734(b)—

5 “(1) no allocation may be made to stock in a
6 corporation (or any person which is related (within
7 the meaning of section 267(b) or 707(b)(1)) to such
8 corporation) which is a partner in the partnership,
9 and

10 “(2) any amount not allocable to stock by rea-
11 son of paragraph (1) shall be allocated under sub-
12 section (a) to other partnership property in such
13 manner as the Secretary may prescribe.

14 Gain shall be recognized to the partnership to the extent
15 that the amount required to be allocated under paragraph
16 (2) to other partnership property exceeds the aggregate
17 adjusted basis of such other property immediately before
18 the allocation required by paragraph (2).”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to distributions after February 13,
21 2003.

22 **SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

23 (a) IN GENERAL.—Part V of subchapter M of chap-
24 ter 1 (relating to financial asset securitization investment
25 trusts) is hereby repealed.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (6) of section 56(g) is amended
3 by striking “REMIC, or FASIT” and inserting “or
4 REMIC”.

5 (2) Clause (ii) of section 382(l)(4)(B) is amend-
6 ed by striking “a REMIC to which part IV of sub-
7 chapter M applies, or a FASIT to which part V of
8 subchapter M applies,” and inserting “or a REMIC
9 to which part IV of subchapter M applies,”.

10 (3) Paragraph (1) of section 582(c) is amended
11 by striking “, and any regular interest in a
12 FASIT,”.

13 (4) Subparagraph (E) of section 856(c)(5) is
14 amended by striking the last sentence.

15 (5)(A) Section 860G(a)(1) is amended by add-
16 ing at the end the following new sentence: “An inter-
17 est shall not fail to qualify as a regular interest sole-
18 ly because the specified principal amount of the reg-
19 ular interest (or the amount of interest accrued on
20 the regular interest) can be reduced as a result of
21 the nonoccurrence of 1 or more contingent payments
22 with respect to any reverse mortgage loan held by
23 the REMIC if, on the startup day for the REMIC,
24 the sponsor reasonably believes that all principal and

1 interest due under the regular interest will be paid
2 at or prior to the liquidation of the REMIC.”.

3 (B) The last sentence of section 860G(a)(3) is
4 amended by inserting “, and any reverse mortgage
5 loan (and each balance increase on such loan meet-
6 ing the requirements of subparagraph (A)(iii)) shall
7 be treated as an obligation secured by an interest in
8 real property” before the period at the end.

9 (6) Paragraph (3) of section 860G(a) is amend-
10 ed by adding “and” at the end of subparagraph (B),
11 by striking “, and” at the end of subparagraph (C)
12 and inserting a period, and by striking subparagraph
13 (D).

14 (7) Section 860G(a)(3), as amended by para-
15 graph (6), is amended by adding at the end the fol-
16 lowing new sentence: “For purposes of subparagraph
17 (A), if more than 50 percent of the obligations
18 transferred to, or purchased by, the REMIC are
19 originated by the United States or any State (or any
20 political subdivision, agency, or instrumentality of
21 the United States or any State) and are principally
22 secured by an interest in real property, then each
23 obligation transferred to, or purchased by, the
24 REMIC shall be treated as secured by an interest in
25 real property.”.

1 (8)(A) Section 860G(a)(3)(A) is amended by
2 striking “or” at the end of clause (i), by inserting
3 “or” at the end of clause (ii), and by inserting after
4 clause (ii) the following new clause:

5 “(iii) represents an increase in the
6 principal amount under the original terms
7 of an obligation described in clause (i) or
8 (ii) if such increase—

9 “(I) is attributable to an advance
10 made to the obligor pursuant to the
11 original terms of the obligation,

12 “(II) occurs after the startup
13 day, and

14 “(III) is purchased by the
15 REMIC pursuant to a fixed price con-
16 tract in effect on the startup day.”.

17 (B) Section 860G(a)(7)(B) is amended to read
18 as follows:

19 “(B) QUALIFIED RESERVE FUND.—For
20 purposes of subparagraph (A), the term ‘quali-
21 fied reserve fund’ means any reasonably re-
22 quired reserve to—

23 “(i) provide for full payment of ex-
24 penses of the REMIC or amounts due on
25 regular interests in the event of defaults on

1 qualified mortgages or lower than expected
2 returns on cash flow investments, or

3 “(ii) provide a source of funds for the
4 purchase of obligations described in clause
5 (ii) or (iii) of paragraph (3)(A).

6 The aggregate fair market value of the assets
7 held in any such reserve shall not exceed 50
8 percent of the aggregate fair market value of all
9 of the assets of the REMIC on the startup day,
10 and the amount of any such reserve shall be
11 promptly and appropriately reduced to the ex-
12 tent the amount held in such reserve is no
13 longer reasonably required for purposes speci-
14 fied in clause (i) or (ii) of paragraph (3)(A).”.

15 (9) Subparagraph (C) of section 1202(e)(4) is
16 amended by striking “REMIC, or FASIT” and in-
17 serting “or REMIC”.

18 (10) Clause (xi) of section 7701(a)(19)(C) is
19 amended—

20 (A) by striking “and any regular interest
21 in a FASIT,” and

22 (B) by striking “or FASIT” each place it
23 appears.

24 (11) Subparagraph (A) of section 7701(i)(2) is
25 amended by striking “or a FASIT”.

1 (12) The table of parts for subchapter M of
2 chapter 1 is amended by striking the item relating
3 to part V.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall take effect on February 14, 2003.

8 (2) EXCEPTION FOR EXISTING FASITS.—Para-
9 graph (1) shall not apply to any FASIT in existence
10 on the date of the enactment of this Act to the ex-
11 tent that regular interests issued by the FASIT be-
12 fore such date continue to remain outstanding in ac-
13 cordance with the original terms of issuance.

14 **SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
15 **INTEREST ON CONVERTIBLE DEBT.**

16 (a) IN GENERAL.—Paragraph (2) of section 163(l)
17 is amended by inserting “or equity held by the issuer (or
18 any related party) in any other person” after “or a related
19 party”.

20 (b) CAPITALIZATION ALLOWED WITH RESPECT TO
21 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-
22 LATED PARTIES.—Section 163(l) is amended by redesi-
23 gnating paragraphs (4) and (5) as paragraphs (5) and (6)
24 and by inserting after paragraph (3) the following new
25 paragraph:

1 “(4) CAPITALIZATION ALLOWED WITH RESPECT
2 TO EQUITY OF PERSONS OTHER THAN ISSUER AND
3 RELATED PARTIES.—If the disqualified debt instru-
4 ment of a corporation is payable in equity held by
5 the issuer (or any related party) in any other person
6 (other than a related party), the basis of such equity
7 shall be increased by the amount not allowed as a
8 deduction by reason of paragraph (1) with respect to
9 the instrument.”.

10 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
11 BY DEALERS IN SECURITIES.—Section 163(l), as amend-
12 ed by subsection (b), is amended by redesignating para-
13 graphs (5) and (6) as paragraphs (6) and (7) and by in-
14 serting after paragraph (4) the following new paragraph:

15 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS
16 ISSUED BY DEALERS IN SECURITIES.—For purposes
17 of this subsection, the term ‘disqualified debt instru-
18 ment’ does not include indebtedness issued by a
19 dealer in securities (or a related party) which is pay-
20 able in, or by reference to, equity (other than equity
21 of the issuer or a related party) held by such dealer
22 in its capacity as a dealer in securities. For purposes
23 of this paragraph, the term ‘dealer in securities’ has
24 the meaning given such term by section 475.”.

1 (c) CONFORMING AMENDMENTS.—Paragraph (3) of
2 section 163(l) is amended—

3 (1) by striking “or a related party” in the ma-
4 terial preceding subparagraph (A) and inserting “or
5 any other person”, and

6 (2) by striking “or interest” each place it ap-
7 pears.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to debt instruments issued after
10 February 13, 2003.

11 **SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
12 **FITS UNDER SECTION 269.**

13 (a) IN GENERAL.—Subsection (a) of section 269 (re-
14 lating to acquisitions made to evade or avoid income tax)
15 is amended to read as follows:

16 “(a) IN GENERAL.—If—

17 “(1)(A) any person or persons acquire, directly
18 or indirectly, control of a corporation, or

19 “(B) any corporation acquires, directly or indi-
20 rectly, property of another corporation and the basis
21 of such property, in the hands of the acquiring cor-
22 poration, is determined by reference to the basis in
23 the hands of the transferor corporation, and

1 “(2) the principal purpose for which such acqui-
2 sition was made is evasion or avoidance of Federal
3 income tax,
4 then the Secretary may disallow such deduction, credit,
5 or other allowance. For purposes of paragraph (1)(A),
6 control means the ownership of stock possessing at least
7 50 percent of the total combined voting power of all class-
8 es of stock entitled to vote or at least 50 percent of the
9 total value of all shares of all classes of stock of the cor-
10 poration.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to stock and property acquired
13 after February 13, 2003.

14 **SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUB-**
15 **PART F AND PASSIVE FOREIGN INVESTMENT**
16 **COMPANY RULES.**

17 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
18 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
19 FOREIGN CORPORATIONS.—Paragraph (2) of section
20 1297(e) (relating to passive foreign investment company)
21 is amended by adding at the end the following flush sen-
22 tence:

23 “Such term shall not include any period if the
24 earning of subpart F income by such corpora-
25 tion during such period would result in only a

1 remote likelihood of an inclusion in gross in-
2 come under section 951(a)(1)(A)(i).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to taxable years of controlled for-
5 eign corporations beginning after February 13, 2003, and
6 to taxable years of United States shareholders with or
7 within which such taxable years of controlled foreign cor-
8 porations end.

9 **Subtitle D—Provisions to**
10 **Discourage Expatriation**

11 **SEC. 441. TAX TREATMENT OF INVERTED CORPORATE EN-**
12 **TITIES.**

13 (a) **IN GENERAL.**—Subchapter C of chapter 80 (re-
14 lating to provisions affecting more than one subtitle) is
15 amended by adding at the end the following new section:

16 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
17 **ENTITIES**

18 **“(a) INVERTED CORPORATIONS TREATED AS DOMES-**
19 **TIC CORPORATIONS.**—

20 **“(1) IN GENERAL.**—If a foreign incorporated
21 entity is treated as an inverted domestic corporation,
22 then, notwithstanding section 7701(a)(4), such enti-
23 ty shall be treated for purposes of this title as a do-
24 mestic corporation.

1 “(2) INVERTED DOMESTIC CORPORATION.—For
2 purposes of this section, a foreign incorporated enti-
3 ty shall be treated as an inverted domestic corpora-
4 tion if, pursuant to a plan (or a series of related
5 transactions)—

6 “(A) the entity completes after March 20,
7 2002, the direct or indirect acquisition of sub-
8 stantially all of the properties held directly or
9 indirectly by a domestic corporation or substan-
10 tially all of the properties constituting a trade
11 or business of a domestic partnership,

12 “(B) after the acquisition at least 80 per-
13 cent of the stock (by vote or value) of the entity
14 is held—

15 “(i) in the case of an acquisition with
16 respect to a domestic corporation, by
17 former shareholders of the domestic cor-
18 poration by reason of holding stock in the
19 domestic corporation, or

20 “(ii) in the case of an acquisition with
21 respect to a domestic partnership, by
22 former partners of the domestic partner-
23 ship by reason of holding a capital or prof-
24 its interest in the domestic partnership,
25 and

1 “(C) the expanded affiliated group which
2 after the acquisition includes the entity does
3 not have substantial business activities in the
4 foreign country in which or under the law of
5 which the entity is created or organized when
6 compared to the total business activities of such
7 expanded affiliated group.

8 Except as provided in regulations, an acquisition of
9 properties of a domestic corporation shall not be
10 treated as described in subparagraph (A) if none of
11 the corporation’s stock was readily tradeable on an
12 established securities market at any time during the
13 4-year period ending on the date of the acquisition.

14 “(b) PRESERVATION OF DOMESTIC TAX BASE IN
15 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-
16 SECTION (a) DOES NOT APPLY.—

17 “(1) IN GENERAL.—If a foreign incorporated
18 entity would be treated as an inverted domestic cor-
19 poration with respect to an acquired entity if
20 either—

21 “(A) subsection (a)(2)(A) were applied by
22 substituting ‘after December 31, 1996, and on
23 or before March 20, 2002’ for ‘after March 20,
24 2002’ and subsection (a)(2)(B) were applied by

1 substituting ‘more than 50 percent’ for ‘at least
2 80 percent’, or

3 “(B) subsection (a)(2)(B) were applied by
4 substituting ‘more than 50 percent’ for ‘at least
5 80 percent’,

6 then the rules of subsection (c) shall apply to any
7 inversion gain of the acquired entity during the ap-
8 plicable period and the rules of subsection (d) shall
9 apply to any related party transaction of the ac-
10 quired entity during the applicable period. This sub-
11 section shall not apply for any taxable year if sub-
12 section (a) applies to such foreign incorporated enti-
13 ty for such taxable year.

14 “(2) ACQUIRED ENTITY.—For purposes of this
15 section—

16 “(A) IN GENERAL.—The term ‘acquired
17 entity’ means the domestic corporation or part-
18 nership substantially all of the properties of
19 which are directly or indirectly acquired in an
20 acquisition described in subsection (a)(2)(A) to
21 which this subsection applies.

22 “(B) AGGREGATION RULES.—Any domes-
23 tic person bearing a relationship described in
24 section 267(b) or 707(b) to an acquired entity
25 shall be treated as an acquired entity with re-

1 spect to the acquisition described in subpara-
2 graph (A).

3 “(3) APPLICABLE PERIOD.—For purposes of
4 this section—

5 “(A) IN GENERAL.—The term ‘applicable
6 period’ means the period—

7 “(i) beginning on the first date prop-
8 erties are acquired as part of the acquisi-
9 tion described in subsection (a)(2)(A) to
10 which this subsection applies, and

11 “(ii) ending on the date which is 10
12 years after the last date properties are ac-
13 quired as part of such acquisition.

14 “(B) SPECIAL RULE FOR INVERSIONS OC-
15 CURRING BEFORE MARCH 21, 2002.—In the case
16 of any acquired entity to which paragraph
17 (1)(A) applies, the applicable period shall be the
18 10-year period beginning on January 1, 2003.

19 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
20 SET.—If subsection (b) applies—

21 “(1) IN GENERAL.—The taxable income of an
22 acquired entity (or any expanded affiliated group
23 which includes such entity) for any taxable year
24 which includes any portion of the applicable period

1 shall in no event be less than the inversion gain of
2 the entity for the taxable year.

3 “(2) CREDITS NOT ALLOWED AGAINST TAX ON
4 INVERSION GAIN.—Credits shall be allowed against
5 the tax imposed by this chapter on an acquired enti-
6 ty for any taxable year described in paragraph (1)
7 only to the extent such tax exceeds the product of—

8 “(A) the amount of the inversion gain for
9 the taxable year, and

10 “(B) the highest rate of tax specified in
11 section 11(b)(1).

12 For purposes of determining the credit allowed by
13 section 901 inversion gain shall be treated as from
14 sources within the United States.

15 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In
16 the case of an acquired entity which is a
17 partnership—

18 “(A) the limitations of this subsection shall
19 apply at the partner rather than the partner-
20 ship level,

21 “(B) the inversion gain of any partner for
22 any taxable year shall be equal to the sum of—

23 “(i) the partner’s distributive share of
24 inversion gain of the partnership for such
25 taxable year, plus

1 “(ii) income or gain required to be
2 recognized for the taxable year by the part-
3 ner under section 367(a), 741, or 1001, or
4 under any other provision of chapter 1, by
5 reason of the transfer during the applica-
6 ble period of any partnership interest of
7 the partner in such partnership to the for-
8 eign incorporated entity, and

9 “(C) the highest rate of tax specified in
10 the rate schedule applicable to the partner
11 under chapter 1 shall be substituted for the
12 rate of tax under paragraph (2)(B).

13 “(4) INVERSION GAIN.—For purposes of this
14 section, the term ‘inversion gain’ means any income
15 or gain required to be recognized under section 304,
16 311(b), 367, 1001, or 1248, or under any other pro-
17 vision of chapter 1, by reason of the transfer during
18 the applicable period of stock or other properties by
19 an acquired entity—

20 “(A) as part of the acquisition described in
21 subsection (a)(2)(A) to which subsection (b) ap-
22 plies, or

23 “(B) after such acquisition to a foreign re-
24 lated person.

1 The Secretary may provide that income or gain from
2 the sale of inventories or other transactions in the
3 ordinary course of a trade or business shall not be
4 treated as inversion gain under subparagraph (B) to
5 the extent the Secretary determines such treatment
6 would not be inconsistent with the purposes of this
7 section.

8 “(5) COORDINATION WITH SECTION 172 AND
9 MINIMUM TAX.—Rules similar to the rules of para-
10 graphs (3) and (4) of section 860E(a) shall apply
11 for purposes of this section.

12 “(6) STATUTE OF LIMITATIONS.—

13 “(A) IN GENERAL.—The statutory period
14 for the assessment of any deficiency attrib-
15 utable to the inversion gain of any taxpayer for
16 any pre-inversion year shall not expire before
17 the expiration of 3 years from the date the Sec-
18 retary is notified by the taxpayer (in such man-
19 ner as the Secretary may prescribe) of the ac-
20 quisition described in subsection (a)(2)(A) to
21 which such gain relates and such deficiency
22 may be assessed before the expiration of such
23 3-year period notwithstanding the provisions of
24 any other law or rule of law which would other-
25 wise prevent such assessment.

1 “(B) PRE-INVERSION YEAR.—For purposes
2 of subparagraph (A), the term ‘pre-inversion
3 year’ means any taxable year if—

4 “(i) any portion of the applicable pe-
5 riod is included in such taxable year, and

6 “(ii) such year ends before the taxable
7 year in which the acquisition described in
8 subsection (a)(2)(A) is completed.

9 “(d) SPECIAL RULES APPLICABLE TO ACQUIRED EN-
10 TITIES TO WHICH SUBSECTION (b) APPLIES.—

11 “(1) INCREASES IN ACCURACY-RELATED PEN-
12 ALTIES.—In the case of any underpayment of tax of
13 an acquired entity to which subsection (b) applies—

14 “(A) section 6662(a) shall be applied with
15 respect to such underpayment by substituting
16 ‘30 percent’ for ‘20 percent’, and

17 “(B) if such underpayment is attributable
18 to one or more gross valuation understatement-
19 s, the increase in the rate of penalty under
20 section 6662(h) shall be to 50 percent rather
21 than 40 percent.

22 “(2) MODIFICATIONS OF LIMITATION ON INTER-
23 EST DEDUCTION.—In the case of an acquired entity
24 to which subsection (b) applies, section 163(j) shall
25 be applied—

1 “(A) without regard to paragraph
2 (2)(A)(ii) thereof, and

3 “(B) by substituting ‘25 percent’ for ‘50
4 percent’ each place it appears in paragraph
5 (2)(B) thereof.

6 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
7 For purposes of this section—

8 “(1) RULES FOR APPLICATION OF SUBSECTION
9 (a)(2).—In applying subsection (a)(2) for purposes
10 of subsections (a) and (b), the following rules shall
11 apply:

12 “(A) CERTAIN STOCK DISREGARDED.—
13 There shall not be taken into account in deter-
14 mining ownership for purposes of subsection
15 (a)(2)(B)—

16 “(i) stock held by members of the ex-
17 panded affiliated group which includes the
18 foreign incorporated entity, or

19 “(ii) stock of such entity which is sold
20 in a public offering or private placement
21 related to the acquisition described in sub-
22 section (a)(2)(A).

23 “(B) PLAN DEEMED IN CERTAIN CASES.—
24 If a foreign incorporated entity acquires directly
25 or indirectly substantially all of the properties

1 of a domestic corporation or partnership during
2 the 4-year period beginning on the date which
3 is 2 years before the ownership requirements of
4 subsection (a)(2)(B) are met with respect to
5 such domestic corporation or partnership, such
6 actions shall be treated as pursuant to a plan.

7 “(C) CERTAIN TRANSFERS DIS-
8 REGARDED.—The transfer of properties or li-
9 abilities (including by contribution or distribu-
10 tion) shall be disregarded if such transfers are
11 part of a plan a principal purpose of which is
12 to avoid the purposes of this section.

13 “(D) SPECIAL RULE FOR RELATED PART-
14 NERSHIPS.—For purposes of applying sub-
15 section (a)(2) to the acquisition of a domestic
16 partnership, except as provided in regulations,
17 all partnerships which are under common con-
18 trol (within the meaning of section 482) shall
19 be treated as 1 partnership.

20 “(E) TREATMENT OF CERTAIN RIGHTS.—
21 The Secretary shall prescribe such regulations
22 as may be necessary—

23 “(i) to treat warrants, options, con-
24 tracts to acquire stock, convertible debt in-

1 struments, and other similar interests as
2 stock, and

3 “(ii) to treat stock as not stock.

4 “(2) EXPANDED AFFILIATED GROUP.—The
5 term ‘expanded affiliated group’ means an affiliated
6 group as defined in section 1504(a) but without re-
7 gard to section 1504(b)(3), except that section
8 1504(a) shall be applied by substituting ‘more than
9 50 percent’ for ‘at least 80 percent’ each place it ap-
10 pears.

11 “(3) FOREIGN INCORPORATED ENTITY.—The
12 term ‘foreign incorporated entity’ means any entity
13 which is, or but for subsection (a)(1) would be,
14 treated as a foreign corporation for purposes of this
15 title.

16 “(4) FOREIGN RELATED PERSON.—The term
17 ‘foreign related person’ means, with respect to any
18 acquired entity, a foreign person which—

19 “(A) bears a relationship to such entity de-
20 scribed in section 267(b) or 707(b), or

21 “(B) is under the same common control
22 (within the meaning of section 482) as such en-
23 tity.

24 “(5) SUBSEQUENT ACQUISITIONS BY UNRE-
25 LATED DOMESTIC CORPORATIONS.—

1 “(A) IN GENERAL.—Subject to such condi-
2 tions, limitations, and exceptions as the Sec-
3 retary may prescribe, if, after an acquisition de-
4 scribed in subsection (a)(2)(A) to which sub-
5 section (b) applies, a domestic corporation stock
6 of which is traded on an established securities
7 market acquires directly or indirectly any prop-
8 erties of one or more acquired entities in a
9 transaction with respect to which the require-
10 ments of subparagraph (B) are met, this sec-
11 tion shall cease to apply to any such acquired
12 entity with respect to which such requirements
13 are met.

14 “(B) REQUIREMENTS.—The requirements
15 of the subparagraph are met with respect to a
16 transaction involving any acquisition described
17 in subparagraph (A) if—

18 “(i) before such transaction the do-
19 mestic corporation did not have a relation-
20 ship described in section 267(b) or 707(b),
21 and was not under common control (within
22 the meaning of section 482), with the ac-
23 quired entity, or any member of an ex-
24 panded affiliated group including such en-
25 tity, and

1 “(ii) after such transaction, such ac-
2 quired entity—

3 “(I) is a member of the same ex-
4 panded affiliated group which includes
5 the domestic corporation or has such
6 a relationship or is under such com-
7 mon control with any member of such
8 group, and

9 “(II) is not a member of, and
10 does not have such a relationship and
11 is not under such common control
12 with any member of, the expanded af-
13 filiated group which before such ac-
14 quisition included such entity.

15 “(f) REGULATIONS.—The Secretary shall provide
16 such regulations as are necessary to carry out this section,
17 including regulations providing for such adjustments to
18 the application of this section as are necessary to prevent
19 the avoidance of the purposes of this section, including the
20 avoidance of such purposes through—

21 “(1) the use of related persons, pass-thru or
22 other noncorporate entities, or other intermediaries,
23 or

1 “(2) transactions designed to have persons
2 cease to be (or not become) members of expanded
3 affiliated groups or related persons.”.

4 (b) INFORMATION REPORTING.—The Secretary of
5 the Treasury shall exercise the Secretary’s authority under
6 the Internal Revenue Code of 1986 to require entities in-
7 volved in transactions to which section 7874 of such Code
8 (as added by subsection (a)) applies to report to the Sec-
9 retary, shareholders, partners, and such other persons as
10 the Secretary may prescribe such information as is nec-
11 essary to ensure the proper tax treatment of such trans-
12 actions.

13 (c) CONFORMING AMENDMENT.—The table of sec-
14 tions for subchapter C of chapter 80 is amended by adding
15 at the end the following new item:

 “Sec. 7874. Rules relating to inverted corporate entities.”.

16 (d) TRANSITION RULE FOR CERTAIN REGULATED
17 INVESTMENT COMPANIES AND UNIT INVESTMENT
18 TRUSTS.—Notwithstanding section 7874 of the Internal
19 Revenue Code of 1986 (as added by subsection (a)), a reg-
20 ulated investment company, or other pooled fund or trust
21 specified by the Secretary of the Treasury, may elect to
22 recognize gain by reason of section 367(a) of such Code
23 with respect to a transaction under which a foreign incor-
24 porated entity is treated as an inverted domestic corpora-
25 tion under section 7874(a) of such Code by reason of an

1 acquisition completed after March 20, 2002, and before
2 January 1, 2004.

3 (e) DISCLOSURE OF CORPORATE EXPATRIATION
4 TRANSACTIONS.—

5 (1) IN GENERAL.—Section 14 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78n) is amended by adding
7 at the end the following new subsection:

8 “(i) PROXY SOLICITATIONS IN CONNECTION WITH
9 CORPORATE EXPATRIATION TRANSACTIONS.—

10 “(1) DISCLOSURE TO SHAREHOLDERS OF EF-
11 FECTS OF CORPORATE EXPATRIATION TRANS-
12 ACTION.—The Commission shall, by rule, require
13 that each domestic issuer shall prominently disclose,
14 not later than 5 business days before any share-
15 holder vote relating to a corporate expatriation
16 transaction, as a separate and distinct document ac-
17 companying each proxy statement relating to the
18 transaction—

19 “(A) the number of employees of the do-
20 mestic issuer that would be located in the new
21 foreign jurisdiction of incorporation or organi-
22 zation of that issuer upon completion of the
23 corporate expatriation transaction;

24 “(B) how the rights of holders of the secu-
25 rities of the domestic issuer would be impacted

1 by a completed corporate expatriation trans-
2 action, and any differences in such rights before
3 and after a completed corporate expatriation
4 transaction; and

5 “(C) that, as a result of a completed cor-
6 porate expatriation transaction, any taxable
7 holder of the securities of the domestic issuer
8 shall be subject to the taxation of any capital
9 gains realized with respect to such securities,
10 and the amount of any such capital gains tax
11 that would apply as a result of the transaction.

12 “(2) DEFINITIONS.—In this subsection, the fol-
13 lowing definitions shall apply:

14 “(A) CORPORATE EXPATRIATION TRANS-
15 ACTION.—The term ‘corporate expatriation
16 transaction’ means any transaction, or series of
17 related transactions, described in subsection (a)
18 or (b) of section 7874 of the Internal Revenue
19 Code of 1986.

20 “(A) DOMESTIC ISSUER.—The term ‘do-
21 mestic issuer’ means an issuer created or orga-
22 nized in the United States or under the law of
23 the United States or of any State.”

24 (2) EFFECTIVE DATE.—Section 14(i) of the Se-
25 curities Exchange Act of 1934 (as added by this

1 subsection) shall apply with respect to corporate ex-
2 patriation transactions (as defined in that section
3 14(i)) proposed on and after the date of enactment
4 of this Act.

5 **SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDI-**
6 **VIDUALS WHO EXPATRIATE.**

7 (a) IN GENERAL.—Subpart A of part II of sub-
8 chapter N of chapter 1 is amended by inserting after sec-
9 tion 877 the following new section:

10 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

11 “(a) GENERAL RULES.—For purposes of this
12 subtitle—

13 “(1) MARK TO MARKET.—Except as provided in
14 subsections (d) and (f), all property of a covered ex-
15 patriate to whom this section applies shall be treated
16 as sold on the day before the expatriation date for
17 its fair market value.

18 “(2) RECOGNITION OF GAIN OR LOSS.—In the
19 case of any sale under paragraph (1)—

20 “(A) notwithstanding any other provision
21 of this title, any gain arising from such sale
22 shall be taken into account for the taxable year
23 of the sale, and

24 “(B) any loss arising from such sale shall
25 be taken into account for the taxable year of

1 the sale to the extent otherwise provided by this
2 title, except that section 1091 shall not apply to
3 any such loss.

4 Proper adjustment shall be made in the amount of
5 any gain or loss subsequently realized for gain or
6 loss taken into account under the preceding sen-
7 tence.

8 “(3) EXCLUSION FOR CERTAIN GAIN.—

9 “(A) IN GENERAL.—The amount which,
10 but for this paragraph, would be includible in
11 the gross income of any individual by reason of
12 this section shall be reduced (but not below
13 zero) by \$600,000. For purposes of this para-
14 graph, allocable expatriation gain taken into ac-
15 count under subsection (f)(2) shall be treated in
16 the same manner as an amount required to be
17 includible in gross income.

18 “(B) COST-OF-LIVING ADJUSTMENT.—

19 “(i) IN GENERAL.—In the case of an
20 expatriation date occurring in any calendar
21 year after 2004, the \$600,000 amount
22 under subparagraph (A) shall be increased
23 by an amount equal to—

24 “(I) such dollar amount, multi-
25 plied by

1 “(II) the cost-of-living adjust-
2 ment determined under section 1(f)(3)
3 for such calendar year, determined by
4 substituting ‘calendar year 2003’ for
5 ‘calendar year 1992’ in subparagraph
6 (B) thereof.

7 “(ii) ROUNDING RULES.—If any
8 amount after adjustment under clause (i)
9 is not a multiple of \$1,000, such amount
10 shall be rounded to the next lower multiple
11 of \$1,000.

12 “(4) ELECTION TO CONTINUE TO BE TAXED AS
13 UNITED STATES CITIZEN.—

14 “(A) IN GENERAL.—If a covered expatriate
15 elects the application of this paragraph—

16 “(i) this section (other than this para-
17 graph and subsection (i)) shall not apply to
18 the expatriate, but

19 “(ii) in the case of property to which
20 this section would apply but for such elec-
21 tion, the expatriate shall be subject to tax
22 under this title in the same manner as if
23 the individual were a United States citizen.

1 “(B) REQUIREMENTS.—Subparagraph (A)
2 shall not apply to an individual unless the
3 individual—

4 “(i) provides security for payment of
5 tax in such form and manner, and in such
6 amount, as the Secretary may require,

7 “(ii) consents to the waiver of any
8 right of the individual under any treaty of
9 the United States which would preclude as-
10 sessment or collection of any tax which
11 may be imposed by reason of this para-
12 graph, and

13 “(iii) complies with such other re-
14 quirements as the Secretary may prescribe.

15 “(C) ELECTION.—An election under sub-
16 paragraph (A) shall apply to all property to
17 which this section would apply but for the elec-
18 tion and, once made, shall be irrevocable. Such
19 election shall also apply to property the basis of
20 which is determined in whole or in part by ref-
21 erence to the property with respect to which the
22 election was made.

23 “(b) ELECTION TO DEFER TAX.—

24 “(1) IN GENERAL.—If the taxpayer elects the
25 application of this subsection with respect to any

1 property treated as sold by reason of subsection (a),
2 the payment of the additional tax attributable to
3 such property shall be postponed until the due date
4 of the return for the taxable year in which such
5 property is disposed of (or, in the case of property
6 disposed of in a transaction in which gain is not rec-
7 ognized in whole or in part, until such other date as
8 the Secretary may prescribe).

9 “(2) DETERMINATION OF TAX WITH RESPECT
10 TO PROPERTY.—For purposes of paragraph (1), the
11 additional tax attributable to any property is an
12 amount which bears the same ratio to the additional
13 tax imposed by this chapter for the taxable year
14 solely by reason of subsection (a) as the gain taken
15 into account under subsection (a) with respect to
16 such property bears to the total gain taken into ac-
17 count under subsection (a) with respect to all prop-
18 erty to which subsection (a) applies.

19 “(3) TERMINATION OF POSTPONEMENT.—No
20 tax may be postponed under this subsection later
21 than the due date for the return of tax imposed by
22 this chapter for the taxable year which includes the
23 date of death of the expatriate (or, if earlier, the
24 time that the security provided with respect to the
25 property fails to meet the requirements of paragraph

1 (4), unless the taxpayer corrects such failure within
2 the time specified by the Secretary).

3 “(4) SECURITY.—

4 “(A) IN GENERAL.—No election may be
5 made under paragraph (1) with respect to any
6 property unless adequate security is provided to
7 the Secretary with respect to such property.

8 “(B) ADEQUATE SECURITY.—For purposes
9 of subparagraph (A), security with respect to
10 any property shall be treated as adequate secu-
11 rity if—

12 “(i) it is a bond in an amount equal
13 to the deferred tax amount under para-
14 graph (2) for the property, or

15 “(ii) the taxpayer otherwise estab-
16 lishes to the satisfaction of the Secretary
17 that the security is adequate.

18 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-
19 tion may be made under paragraph (1) unless the
20 taxpayer consents to the waiver of any right under
21 any treaty of the United States which would pre-
22 clude assessment or collection of any tax imposed by
23 reason of this section.

24 “(6) ELECTIONS.—An election under paragraph
25 (1) shall only apply to property described in the elec-

1 tion and, once made, is irrevocable. An election may
2 be made under paragraph (1) with respect to an in-
3 terest in a trust with respect to which gain is re-
4 quired to be recognized under subsection (f)(1).

5 “(7) INTEREST.—For purposes of section
6 6601—

7 “(A) the last date for the payment of tax
8 shall be determined without regard to the elec-
9 tion under this subsection, and

10 “(B) section 6621(a)(2) shall be applied by
11 substituting ‘5 percentage points’ for ‘3 per-
12 centage points’ in subparagraph (B) thereof.

13 “(c) COVERED EXPATRIATE.—For purposes of this
14 section—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), the term ‘covered expatriate’ means an
17 expatriate.

18 “(2) EXCEPTIONS.—An individual shall not be
19 treated as a covered expatriate if—

20 “(A) the individual—

21 “(i) became at birth a citizen of the
22 United States and a citizen of another
23 country and, as of the expatriation date,
24 continues to be a citizen of, and is taxed
25 as a resident of, such other country, and

1 “(ii) has not been a resident of the
2 United States (as defined in section
3 7701(b)(1)(A)(ii)) during the 5 taxable
4 years ending with the taxable year during
5 which the expatriation date occurs, or

6 “(B)(i) the individual’s relinquishment of
7 United States citizenship occurs before such in-
8 dividual attains age 18½, and

9 “(ii) the individual has been a resident of
10 the United States (as so defined) for not more
11 than 5 taxable years before the date of relin-
12 quishment.

13 “(d) EXEMPT PROPERTY; SPECIAL RULES FOR PEN-
14 SION PLANS.—

15 “(1) EXEMPT PROPERTY.—This section shall
16 not apply to the following:

17 “(A) UNITED STATES REAL PROPERTY IN-
18 TERESTS.—Any United States real property in-
19 terest (as defined in section 897(c)(1)), other
20 than stock of a United States real property
21 holding corporation which does not, on the day
22 before the expatriation date, meet the require-
23 ments of section 897(c)(2).

24 “(B) SPECIFIED PROPERTY.—Any prop-
25 erty or interest in property not described in

1 subparagraph (A) which the Secretary specifies
2 in regulations.

3 “(2) SPECIAL RULES FOR CERTAIN RETIRE-
4 MENT PLANS.—

5 “(A) IN GENERAL.—If a covered expatriate
6 holds on the day before the expatriation date
7 any interest in a retirement plan to which this
8 paragraph applies—

9 “(i) such interest shall not be treated
10 as sold for purposes of subsection (a)(1),
11 but

12 “(ii) an amount equal to the present
13 value of the expatriate’s nonforfeitable ac-
14 crued benefit shall be treated as having
15 been received by such individual on such
16 date as a distribution under the plan.

17 “(B) TREATMENT OF SUBSEQUENT DIS-
18 TRIBUTIONS.—In the case of any distribution
19 on or after the expatriation date to or on behalf
20 of the covered expatriate from a plan from
21 which the expatriate was treated as receiving a
22 distribution under subparagraph (A), the
23 amount otherwise includible in gross income by
24 reason of the subsequent distribution shall be
25 reduced by the excess of the amount includible

1 in gross income under subparagraph (A) over
2 any portion of such amount to which this sub-
3 paragraph previously applied.

4 “(C) TREATMENT OF SUBSEQUENT DIS-
5 TRIBUTIONS BY PLAN.—For purposes of this
6 title, a retirement plan to which this paragraph
7 applies, and any person acting on the plan’s be-
8 half, shall treat any subsequent distribution de-
9 scribed in subparagraph (B) in the same man-
10 ner as such distribution would be treated with-
11 out regard to this paragraph.

12 “(D) APPLICABLE PLANS.—This para-
13 graph shall apply to—

14 “(i) any qualified retirement plan (as
15 defined in section 4974(c)),

16 “(ii) an eligible deferred compensation
17 plan (as defined in section 457(b)) of an
18 eligible employer described in section
19 457(e)(1)(A), and

20 “(iii) to the extent provided in regula-
21 tions, any foreign pension plan or similar
22 retirement arrangements or programs.

23 “(e) DEFINITIONS.—For purposes of this section—

24 “(1) EXPATRIATE.—The term ‘expatriate’
25 means—

1 “(A) any United States citizen who relin-
2 quishes citizenship, and

3 “(B) any long-term resident of the United
4 States who—

5 “(i) ceases to be a lawful permanent
6 resident of the United States (within the
7 meaning of section 7701(b)(6)), or

8 “(ii) commences to be treated as a
9 resident of a foreign country under the
10 provisions of a tax treaty between the
11 United States and the foreign country and
12 who does not waive the benefits of such
13 treaty applicable to residents of the foreign
14 country.

15 “(2) EXPATRIATION DATE.—The term ‘expa-
16 triation date’ means—

17 “(A) the date an individual relinquishes
18 United States citizenship, or

19 “(B) in the case of a long-term resident of
20 the United States, the date of the event de-
21 scribed in clause (i) or (ii) of paragraph (1)(B).

22 “(3) RELINQUISHMENT OF CITIZENSHIP.—A
23 citizen shall be treated as relinquishing United
24 States citizenship on the earliest of—

1 “(A) the date the individual renounces
2 such individual’s United States nationality be-
3 fore a diplomatic or consular officer of the
4 United States pursuant to paragraph (5) of sec-
5 tion 349(a) of the Immigration and Nationality
6 Act (8 U.S.C. 1481(a)(5)),

7 “(B) the date the individual furnishes to
8 the United States Department of State a signed
9 statement of voluntary relinquishment of
10 United States nationality confirming the per-
11 formance of an act of expatriation specified in
12 paragraph (1), (2), (3), or (4) of section 349(a)
13 of the Immigration and Nationality Act (8
14 U.S.C. 1481(a)(1)–(4)),

15 “(C) the date the United States Depart-
16 ment of State issues to the individual a certifi-
17 cate of loss of nationality, or

18 “(D) the date a court of the United States
19 cancels a naturalized citizen’s certificate of nat-
20 uralization.

21 Subparagraph (A) or (B) shall not apply to any indi-
22 vidual unless the renunciation or voluntary relin-
23 quishment is subsequently approved by the issuance
24 to the individual of a certificate of loss of nationality
25 by the United States Department of State.

1 “(4) LONG-TERM RESIDENT.—The term ‘long-
2 term resident’ has the meaning given to such term
3 by section 877(e)(2).

4 “(f) SPECIAL RULES APPLICABLE TO BENE-
5 FICIARIES’ INTERESTS IN TRUST.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), if an individual is determined under para-
8 graph (3) to hold an interest in a trust on the day
9 before the expatriation date—

10 “(A) the individual shall not be treated as
11 having sold such interest,

12 “(B) such interest shall be treated as a
13 separate share in the trust, and

14 “(C)(i) such separate share shall be treat-
15 ed as a separate trust consisting of the assets
16 allocable to such share,

17 “(ii) the separate trust shall be treated as
18 having sold its assets on the day before the ex-
19 patriation date for their fair market value and
20 as having distributed all of its assets to the in-
21 dividual as of such time, and

22 “(iii) the individual shall be treated as hav-
23 ing recontributed the assets to the separate
24 trust.

1 Subsection (a)(2) shall apply to any income, gain, or
2 loss of the individual arising from a distribution de-
3 scribed in subparagraph (C)(ii). In determining the
4 amount of such distribution, proper adjustments
5 shall be made for liabilities of the trust allocable to
6 an individual's share in the trust.

7 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
8 FIED TRUSTS.—

9 “(A) IN GENERAL.—If the trust interest
10 described in paragraph (1) is an interest in a
11 qualified trust—

12 “(i) paragraph (1) and subsection (a)
13 shall not apply, and

14 “(ii) in addition to any other tax im-
15 posed by this title, there is hereby imposed
16 on each distribution with respect to such
17 interest a tax in the amount determined
18 under subparagraph (B).

19 “(B) AMOUNT OF TAX.—The amount of
20 tax under subparagraph (A)(ii) shall be equal to
21 the lesser of—

22 “(i) the highest rate of tax imposed by
23 section 1(e) for the taxable year which in-
24 cludes the day before the expatriation date,

1 multiplied by the amount of the distribu-
2 tion, or

3 “(ii) the balance in the deferred tax
4 account immediately before the distribution
5 determined without regard to any increases
6 under subparagraph (C)(ii) after the 30th
7 day preceding the distribution.

8 “(C) DEFERRED TAX ACCOUNT.—For pur-
9 poses of subparagraph (B)(ii)—

10 “(i) OPENING BALANCE.—The open-
11 ing balance in a deferred tax account with
12 respect to any trust interest is an amount
13 equal to the tax which would have been im-
14 posed on the allocable expatriation gain
15 with respect to the trust interest if such
16 gain had been included in gross income
17 under subsection (a).

18 “(ii) INCREASE FOR INTEREST.—The
19 balance in the deferred tax account shall
20 be increased by the amount of interest de-
21 termined (on the balance in the account at
22 the time the interest accrues), for periods
23 after the 90th day after the expatriation
24 date, by using the rates and method appli-
25 cable under section 6621 for underpay-

1 ments of tax for such periods, except that
2 section 6621(a)(2) shall be applied by sub-
3 stituting ‘5 percentage points’ for ‘3 per-
4 centage points’ in subparagraph (B) there-
5 of.

6 “(iii) DECREASE FOR TAXES PRE-
7 VIOUSLY PAID.—The balance in the tax de-
8 ferred account shall be reduced—

9 “(I) by the amount of taxes im-
10 posed by subparagraph (A) on any
11 distribution to the person holding the
12 trust interest, and

13 “(II) in the case of a person
14 holding a nonvested interest, to the
15 extent provided in regulations, by the
16 amount of taxes imposed by subpara-
17 graph (A) on distributions from the
18 trust with respect to nonvested inter-
19 ests not held by such person.

20 “(D) ALLOCABLE EXPATRIATION GAIN.—
21 For purposes of this paragraph, the allocable
22 expatriation gain with respect to any bene-
23 ficiary’s interest in a trust is the amount of
24 gain which would be allocable to such bene-
25 ficiary’s vested and nonvested interests in the

1 trust if the beneficiary held directly all assets
2 allocable to such interests.

3 “(E) TAX DEDUCTED AND WITHHELD.—

4 “(i) IN GENERAL.—The tax imposed
5 by subparagraph (A)(ii) shall be deducted
6 and withheld by the trustees from the dis-
7 tribution to which it relates.

8 “(ii) EXCEPTION WHERE FAILURE TO
9 WAIVE TREATY RIGHTS.—If an amount
10 may not be deducted and withheld under
11 clause (i) by reason of the distributee fail-
12 ing to waive any treaty right with respect
13 to such distribution—

14 “(I) the tax imposed by subpara-
15 graph (A)(ii) shall be imposed on the
16 trust and each trustee shall be person-
17 ally liable for the amount of such tax,
18 and

19 “(II) any other beneficiary of the
20 trust shall be entitled to recover from
21 the distributee the amount of such tax
22 imposed on the other beneficiary.

23 “(F) DISPOSITION.—If a trust ceases to be
24 a qualified trust at any time, a covered expa-
25 triate disposes of an interest in a qualified

1 trust, or a covered expatriate holding an inter-
2 est in a qualified trust dies, then, in lieu of the
3 tax imposed by subparagraph (A)(ii), there is
4 hereby imposed a tax equal to the lesser of—

5 “(i) the tax determined under para-
6 graph (1) as if the day before the expatria-
7 tion date were the date of such cessation,
8 disposition, or death, whichever is applica-
9 ble, or

10 “(ii) the balance in the tax deferred
11 account immediately before such date.

12 Such tax shall be imposed on the trust and
13 each trustee shall be personally liable for the
14 amount of such tax and any other beneficiary
15 of the trust shall be entitled to recover from the
16 covered expatriate or the estate the amount of
17 such tax imposed on the other beneficiary.

18 “(G) DEFINITIONS AND SPECIAL RULES.—

19 For purposes of this paragraph—

20 “(i) QUALIFIED TRUST.—The term
21 ‘qualified trust’ means a trust which is de-
22 scribed in section 7701(a)(30)(E).

23 “(ii) VESTED INTEREST.—The term
24 ‘vested interest’ means any interest which,

1 as of the day before the expatriation date,
2 is vested in the beneficiary.

3 “(iii) NONVESTED INTEREST.—The
4 term ‘nonvested interest’ means, with re-
5 spect to any beneficiary, any interest in a
6 trust which is not a vested interest. Such
7 interest shall be determined by assuming
8 the maximum exercise of discretion in
9 favor of the beneficiary and the occurrence
10 of all contingencies in favor of the bene-
11 ficiary.

12 “(iv) ADJUSTMENTS.—The Secretary
13 may provide for such adjustments to the
14 bases of assets in a trust or a deferred tax
15 account, and the timing of such adjust-
16 ments, in order to ensure that gain is
17 taxed only once.

18 “(v) COORDINATION WITH RETIRE-
19 MENT PLAN RULES.—This subsection shall
20 not apply to an interest in a trust which
21 is part of a retirement plan to which sub-
22 section (d)(2) applies.

23 “(3) DETERMINATION OF BENEFICIARIES’ IN-
24 TEREST IN TRUST.—

1 “(A) DETERMINATIONS UNDER PARA-
2 GRAPH (1).—For purposes of paragraph (1), a
3 beneficiary’s interest in a trust shall be based
4 upon all relevant facts and circumstances, in-
5 cluding the terms of the trust instrument and
6 any letter of wishes or similar document, histor-
7 ical patterns of trust distributions, and the ex-
8 istence of and functions performed by a trust
9 protector or any similar adviser.

10 “(B) OTHER DETERMINATIONS.—For pur-
11 poses of this section—

12 “(i) CONSTRUCTIVE OWNERSHIP.—If
13 a beneficiary of a trust is a corporation,
14 partnership, trust, or estate, the share-
15 holders, partners, or beneficiaries shall be
16 deemed to be the trust beneficiaries for
17 purposes of this section.

18 “(ii) TAXPAYER RETURN POSITION.—
19 A taxpayer shall clearly indicate on its in-
20 come tax return—

21 “(I) the methodology used to de-
22 termine that taxpayer’s trust interest
23 under this section, and

24 “(II) if the taxpayer knows (or
25 has reason to know) that any other

1 beneficiary of such trust is using a
2 different methodology to determine
3 such beneficiary's trust interest under
4 this section.

5 “(g) TERMINATION OF DEFERRALS, ETC.—In the
6 case of any covered expatriate, notwithstanding any other
7 provision of this title—

8 “(1) any period during which recognition of in-
9 come or gain is deferred shall terminate on the day
10 before the expatriation date, and

11 “(2) any extension of time for payment of tax
12 shall cease to apply on the day before the expatria-
13 tion date and the unpaid portion of such tax shall
14 be due and payable at the time and in the manner
15 prescribed by the Secretary.

16 “(h) IMPOSITION OF TENTATIVE TAX.—

17 “(1) IN GENERAL.—If an individual is required
18 to include any amount in gross income under sub-
19 section (a) for any taxable year, there is hereby im-
20 posed, immediately before the expatriation date, a
21 tax in an amount equal to the amount of tax which
22 would be imposed if the taxable year were a short
23 taxable year ending on the expatriation date.

1 “(2) DUE DATE.—The due date for any tax im-
2 posed by paragraph (1) shall be the 90th day after
3 the expatriation date.

4 “(3) TREATMENT OF TAX.—Any tax paid under
5 paragraph (1) shall be treated as a payment of the
6 tax imposed by this chapter for the taxable year to
7 which subsection (a) applies.

8 “(4) DEFERRAL OF TAX.—The provisions of
9 subsection (b) shall apply to the tax imposed by this
10 subsection to the extent attributable to gain includ-
11 ible in gross income by reason of this section.

12 “(i) SPECIAL LIENS FOR DEFERRED TAX
13 AMOUNTS.—

14 “(1) IMPOSITION OF LIEN.—

15 “(A) IN GENERAL.—If a covered expatriate
16 makes an election under subsection (a)(4) or
17 (b) which results in the deferral of any tax im-
18 posed by reason of subsection (a), the deferred
19 amount (including any interest, additional
20 amount, addition to tax, assessable penalty, and
21 costs attributable to the deferred amount) shall
22 be a lien in favor of the United States on all
23 property of the expatriate located in the United
24 States (without regard to whether this section
25 applies to the property).

1 “(B) DEFERRED AMOUNT.—For purposes
2 of this subsection, the deferred amount is the
3 amount of the increase in the covered expatri-
4 ate’s income tax which, but for the election
5 under subsection (a)(4) or (b), would have oc-
6 curred by reason of this section for the taxable
7 year including the expatriation date.

8 “(2) PERIOD OF LIEN.—The lien imposed by
9 this subsection shall arise on the expatriation date
10 and continue until—

11 “(A) the liability for tax by reason of this
12 section is satisfied or has become unenforceable
13 by reason of lapse of time, or

14 “(B) it is established to the satisfaction of
15 the Secretary that no further tax liability may
16 arise by reason of this section.

17 “(3) CERTAIN RULES APPLY.—The rules set
18 forth in paragraphs (1), (3), and (4) of section
19 6324A(d) shall apply with respect to the lien im-
20 posed by this subsection as if it were a lien imposed
21 by section 6324A.

22 “(j) REGULATIONS.—The Secretary shall prescribe
23 such regulations as may be necessary or appropriate to
24 carry out the purposes of this section.”.

1 (b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS
2 RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS
3 FROM EXPATRIATES.—Section 102 (relating to gifts, etc.
4 not included in gross income) is amended by adding at
5 the end the following new subsection:

6 “(d) GIFTS AND INHERITANCES FROM COVERED EX-
7 PATRIATES.—

8 “(1) IN GENERAL.—Subsection (a) shall not ex-
9 clude from gross income the value of any property
10 acquired by gift, bequest, devise, or inheritance from
11 a covered expatriate after the expatriation date. For
12 purposes of this subsection, any term used in this
13 subsection which is also used in section 877A shall
14 have the same meaning as when used in section
15 877A.

16 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE
17 SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)
18 shall not apply to any property if either—

19 “(A) the gift, bequest, devise, or inherit-
20 ance is—

21 “(i) shown on a timely filed return of
22 tax imposed by chapter 12 as a taxable gift
23 by the covered expatriate, or

24 “(ii) included in the gross estate of
25 the covered expatriate for purposes of

1 chapter 11 and shown on a timely filed re-
2 turn of tax imposed by chapter 11 of the
3 estate of the covered expatriate, or

4 “(B) no such return was timely filed but
5 no such return would have been required to be
6 filed even if the covered expatriate were a cit-
7 izen or long-term resident of the United
8 States.”.

9 (c) DEFINITION OF TERMINATION OF UNITED
10 STATES CITIZENSHIP.—Section 7701(a) is amended by
11 adding at the end the following new paragraph:

12 “(48) TERMINATION OF UNITED STATES CITI-
13 ZENSHIP.—

14 “(A) IN GENERAL.—An individual shall
15 not cease to be treated as a United States cit-
16 izen before the date on which the individual’s
17 citizenship is treated as relinquished under sec-
18 tion 877A(e)(3).

19 “(B) DUAL CITIZENS.—Under regulations
20 prescribed by the Secretary, subparagraph (A)
21 shall not apply to an individual who became at
22 birth a citizen of the United States and a cit-
23 izen of another country.”.

24 (d) INELIGIBILITY FOR VISA OR ADMISSION TO
25 UNITED STATES.—

1 (1) IN GENERAL.—Section 212(a)(10)(E) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1182(a)(10)(E)) is amended to read as follows:

4 “(E) FORMER CITIZENS NOT IN COMPLI-
5 ANCE WITH EXPATRIATION REVENUE PROVI-
6 SIONS.—Any alien who is a former citizen of
7 the United States who relinquishes United
8 States citizenship (within the meaning of sec-
9 tion 877A(e)(3) of the Internal Revenue Code
10 of 1986) and who is not in compliance with sec-
11 tion 877A of such Code (relating to expatria-
12 tion).”.

13 (2) AVAILABILITY OF INFORMATION.—

14 (A) IN GENERAL.—Section 6103(l) (relat-
15 ing to disclosure of returns and return informa-
16 tion for purposes other than tax administration)
17 is amended by adding at the end the following
18 new paragraph:

19 “(19) DISCLOSURE TO DENY VISA OR ADMIS-
20 SION TO CERTAIN EXPATRIATES.—Upon written re-
21 quest of the Attorney General or the Attorney Gen-
22 eral’s delegate, the Secretary shall disclose whether
23 an individual is in compliance with section 877A
24 (and if not in compliance, any items of noncompli-
25 ance) to officers and employees of the Federal agen-

1 this subsection shall apply to individuals who
2 relinquish United States citizenship on or after
3 the date of the enactment of this Act.

4 (B) TECHNICAL AMENDMENTS.—The
5 amendments made by paragraph (2)(B)(i) shall
6 take effect as if included in the amendments
7 made by section 202(b)(2)(B) of the Trade Act
8 of 2002 (Public Law 107–210; 116 Stat. 961).

9 (e) CONFORMING AMENDMENTS.—

10 (1) Section 877 is amended by adding at the
11 end the following new subsection:

12 “(g) APPLICATION.—This section shall not apply to
13 an expatriate (as defined in section 877A(e)) whose expa-
14 triation date (as so defined) occurs on or after January
15 1, 2004.”.

16 (2) Section 2107 is amended by adding at the
17 end the following new subsection:

18 “(f) APPLICATION.—This section shall not apply to
19 any expatriate subject to section 877A.”.

20 (3) Section 2501(a)(3) is amended by adding at
21 the end the following new subparagraph:

22 “(F) APPLICATION.—This paragraph shall
23 not apply to any expatriate subject to section
24 877A.”.

1 (4)(A) Paragraph (1) of section 6039G(d) is
2 amended by inserting “or 877A” after “section
3 877”.

4 (B) The second sentence of section 6039G(e) is
5 amended by inserting “or who relinquishes United
6 States citizenship (within the meaning of section
7 877A(e)(3))” after “877(a)”.

8 (C) Section 6039G(f) is amended by inserting
9 “or 877A(e)(2)(B)” after “877(e)(1)”.

10 (f) CLERICAL AMENDMENT.—The table of sections
11 for subpart A of part II of subchapter N of chapter 1
12 is amended by inserting after the item relating to section
13 877 the following new item:

 “Sec. 877A. Tax responsibilities of expatriation.”.

14 (g) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in this
16 subsection, the amendments made by this section
17 shall apply to expatriates (within the meaning of
18 section 877A(e) of the Internal Revenue Code of
19 1986, as added by this section) whose expatriation
20 date (as so defined) occurs on or after January 1,
21 2004.

22 (2) GIFTS AND BEQUESTS.—Section 102(d) of
23 the Internal Revenue Code of 1986 (as added by
24 subsection (b)) shall apply to gifts and bequests re-
25 ceived on or after January 1, 2004, from an indi-

1 vidual or the estate of an individual whose expatria-
2 tion date (as so defined) occurs after such date.

3 (3) DUE DATE FOR TENTATIVE TAX.—The due
4 date under section 877A(h)(2) of the Internal Rev-
5 enue Code of 1986, as added by this section, shall
6 in no event occur before the 90th day after the date
7 of the enactment of this Act.

8 **SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
9 **ERS IN INVERTED CORPORATIONS.**

10 (a) IN GENERAL.—Subtitle D is amended by adding
11 at the end the following new chapter:

12 **“CHAPTER 48—STOCK COMPENSATION OF**
13 **INSIDERS IN INVERTED CORPORATIONS**

 “Sec. 5000A. Stock compensation of insiders in inverted corpora-
 tions entities.

14 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
15 **VERTED CORPORATIONS.**

16 “(a) IMPOSITION OF TAX.—In the case of an indi-
17 vidual who is a disqualified individual with respect to any
18 inverted corporation, there is hereby imposed on such per-
19 son a tax equal to 20 percent of the value (determined
20 under subsection (b)) of the specified stock compensation
21 held (directly or indirectly) by or for the benefit of such
22 individual or a member of such individual’s family (as de-
23 fined in section 267) at any time during the 12-month

1 period beginning on the date which is 6 months before
2 the inversion date.

3 “(b) VALUE.—For purposes of subsection (a)—

4 “(1) IN GENERAL.—The value of specified stock
5 compensation shall be—

6 “(A) in the case of a stock option (or other
7 similar right) or any stock appreciation right,
8 the fair value of such option or right, and

9 “(B) in any other case, the fair market
10 value of such compensation.

11 “(2) DATE FOR DETERMINING VALUE.—The
12 determination of value shall be made—

13 “(A) in the case of specified stock com-
14 pensation held on the inversion date, on such
15 date,

16 “(B) in the case of such compensation
17 which is canceled during the 6 months before
18 the inversion date, on the day before such can-
19 cellation, and

20 “(C) in the case of such compensation
21 which is granted after the inversion date, on the
22 date such compensation is granted.

23 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
24 RECOGNIZED.—Subsection (a) shall apply to any disquali-
25 fied individual with respect to an inverted corporation only

1 if gain (if any) on any stock in such corporation is recog-
2 nized in whole or part by any shareholder by reason of
3 the acquisition referred to in section 7874(a)(2)(A) (deter-
4 mined by substituting ‘July 10, 2002’ for ‘March 20,
5 2002’) with respect to such corporation.

6 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
7 COMPENSATION.—Subsection (a) shall not apply to—

8 “(1) any stock option which is exercised on the
9 inversion date or during the 6-month period before
10 such date and to the stock acquired in such exercise,
11 if income is recognized under section 83 on or before
12 the inversion date with respect to the stock acquired
13 pursuant to such exercise, and

14 “(2) any specified stock compensation which is
15 exercised, sold, exchanged, distributed, cashed out,
16 or otherwise paid during such period in a trans-
17 action in which gain or loss is recognized in full.

18 “(e) DEFINITIONS.—For purposes of this section—

19 “(1) DISQUALIFIED INDIVIDUAL.—The term
20 ‘disqualified individual’ means, with respect to a cor-
21 poration, any individual who, at any time during the
22 12-month period beginning on the date which is 6
23 months before the inversion date—

1 “(A) is subject to the requirements of sec-
2 tion 16(a) of the Securities Exchange Act of
3 1934 with respect to such corporation, or

4 “(B) would be subject to such require-
5 ments if such corporation were an issuer of eq-
6 uity securities referred to in such section.

7 “(2) INVERTED CORPORATION; INVERSION
8 DATE.—

9 “(A) INVERTED CORPORATION.—The term
10 ‘inverted corporation’ means any corporation to
11 which subsection (a) or (b) of section 7874 ap-
12 plies determined—

13 “(i) by substituting ‘July 10, 2002’
14 for ‘March 20, 2002’ in section
15 7874(a)(2)(A), and

16 “(ii) without regard to subsection
17 (b)(1)(A).

18 Such term includes any predecessor or suc-
19 cessor of such a corporation.

20 “(B) INVERSION DATE.—The term ‘inver-
21 sion date’ means, with respect to a corporation,
22 the date on which the corporation first becomes
23 an inverted corporation.

24 “(3) SPECIFIED STOCK COMPENSATION.—

1 “(A) IN GENERAL.—The term ‘specified
2 stock compensation’ means payment (or right
3 to payment) granted by the inverted corpora-
4 tion (or by any member of the expanded affili-
5 ated group which includes such corporation) to
6 any person in connection with the performance
7 of services by a disqualified individual for such
8 corporation or member if the value of such pay-
9 ment or right is based on (or determined by ref-
10 erence to) the value (or change in value) of
11 stock in such corporation (or any such mem-
12 ber).

13 “(B) EXCEPTIONS.—Such term shall not
14 include—

15 “(i) any option to which part II of
16 subchapter D of chapter 1 applies, or

17 “(ii) any payment or right to payment
18 from a plan referred to in section
19 280G(b)(6).

20 “(4) EXPANDED AFFILIATED GROUP.—The
21 term ‘expanded affiliated group’ means an affiliated
22 group (as defined in section 1504(a) without regard
23 to section 1504(b)(3)); except that section 1504(a)
24 shall be applied by substituting ‘more than 50 per-
25 cent’ for ‘at least 80 percent’ each place it appears.

1 “(f) SPECIAL RULES.—For purposes of this
2 section—

3 “(1) CANCELLATION OF RESTRICTION.—The
4 cancellation of a restriction which by its terms will
5 never lapse shall be treated as a grant.

6 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
7 CORPORATION TREATED AS SPECIFIED STOCK COM-
8 PENSATION.—Any payment of the tax imposed by
9 this section directly or indirectly by the inverted cor-
10 poration or by any member of the expanded affili-
11 ated group which includes such corporation—

12 “(A) shall be treated as specified stock
13 compensation, and

14 “(B) shall not be allowed as a deduction
15 under any provision of chapter 1.

16 “(3) CERTAIN RESTRICTIONS IGNORED.—
17 Whether there is specified stock compensation, and
18 the value thereof, shall be determined without regard
19 to any restriction other than a restriction which by
20 its terms will never lapse.

21 “(4) PROPERTY TRANSFERS.—Any transfer of
22 property shall be treated as a payment and any right
23 to a transfer of property shall be treated as a right
24 to a payment.

1 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
2 For purposes of subtitle F, any tax imposed by this
3 section shall be treated as a tax imposed by subtitle
4 A.

5 “(g) REGULATIONS.—The Secretary shall prescribe
6 such regulations as may be necessary or appropriate to
7 carry out the purposes of this section.”.

8 (b) DENIAL OF DEDUCTION.—

9 (1) IN GENERAL.—Paragraph (6) of section
10 275(a) is amended by inserting “48,” after “46,”.

11 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
12 PENSATION REDUCED BY PAYMENT OF EXCISE TAX
13 ON SPECIFIED STOCK COMPENSATION.—Paragraph
14 (4) of section 162(m) is amended by adding at the
15 end the following new subparagraph:

16 “(G) COORDINATION WITH EXCISE TAX ON
17 SPECIFIED STOCK COMPENSATION.—The dollar
18 limitation contained in paragraph (1) with re-
19 spect to any covered employee shall be reduced
20 (but not below zero) by the amount of any pay-
21 ment (with respect to such employee) of the tax
22 imposed by section 5000A directly or indirectly
23 by the inverted corporation (as defined in such
24 section) or by any member of the expanded af-

1 filiated group (as defined in such section) which
2 includes such corporation.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) The last sentence of section 3121(v)(2)(A)
5 is amended by inserting before the period “or to any
6 specified stock compensation (as defined in section
7 5000A) on which tax is imposed by section 5000A”.

8 (2) The table of chapters for subtitle D is
9 amended by adding at the end the following new
10 item:

“Chapter 48. Stock compensation of insiders in inverted corpora-
tions.”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on July 11, 2002; except that
13 periods before such date shall not be taken into account
14 in applying the periods in subsections (a) and (e)(1) of
15 section 5000A of the Internal Revenue Code of 1986, as
16 added by this section.

17 **SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOR-**
18 **EIGN JURISDICTIONS.**

19 (a) IN GENERAL.—Section 845(a) (relating to alloca-
20 tion in case of reinsurance agreement involving tax avoid-
21 ance or evasion) is amended by striking “source and char-
22 acter” and inserting “amount, source, or character”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to any risk reinsured after April
3 11, 2002.

4 **SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISI-**
5 **TIONS.**

6 (a) IN GENERAL.—Subpart B of part III of sub-
7 chapter A of chapter 61 is amended by inserting after sec-
8 tion 6043 the following new section:

9 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

10 “(a) IN GENERAL.—The acquiring corporation in any
11 taxable acquisition shall make a return (according to the
12 forms or regulations prescribed by the Secretary) setting
13 forth—

14 “(1) a description of the acquisition,

15 “(2) the name and address of each shareholder
16 of the acquired corporation who is required to recog-
17 nize gain (if any) as a result of the acquisition,

18 “(3) the amount of money and the fair market
19 value of other property transferred to each such
20 shareholder as part of such acquisition, and

21 “(4) such other information as the Secretary
22 may prescribe.

23 To the extent provided by the Secretary, the requirements
24 of this section applicable to the acquiring corporation shall

1 be applicable to the acquired corporation and not to the
2 acquiring corporation.

3 “(b) NOMINEE REPORTING.—Any person who holds
4 stock as a nominee for another person shall furnish in the
5 manner prescribed by the Secretary to such other person
6 the information provided by the corporation under sub-
7 section (d).

8 “(c) TAXABLE ACQUISITION.—For purposes of this
9 section, the term ‘taxable acquisition’ means any acquisi-
10 tion by a corporation of stock in or property of another
11 corporation if any shareholder of the acquired corporation
12 is required to recognize gain (if any) as a result of such
13 acquisition.

14 “(d) STATEMENTS TO BE FURNISHED TO SHARE-
15 HOLDERS.—Every person required to make a return under
16 subsection (a) shall furnish to each shareholder whose
17 name is required to be set forth in such return a written
18 statement showing—

19 “(1) the name, address, and phone number of
20 the information contact of the person required to
21 make such return,

22 “(2) the information required to be shown on
23 such return with respect to such shareholder, and

24 “(3) such other information as the Secretary
25 may prescribe.

1 The written statement required under the preceding sen-
2 tence shall be furnished to the shareholder on or before
3 January 31 of the year following the calendar year during
4 which the taxable acquisition occurred.”.

5 (b) ASSESSABLE PENALTIES.—

6 (1) Subparagraph (B) of section 6724(d)(1)
7 (relating to definitions) is amended by redesignating
8 clauses (ii) through (xvii) as clauses (iii) through
9 (xviii), respectively, and by inserting after clause (i)
10 the following new clause:

11 “(ii) section 6043A(a) (relating to re-
12 turns relating to taxable mergers and ac-
13 quisitions),”.

14 (2) Paragraph (2) of section 6724(d) is amend-
15 ed by redesignating subparagraphs (F) through
16 (AA) as subparagraphs (G) through (BB), respec-
17 tively, and by inserting after subparagraph (E) the
18 following new subparagraph:

19 “(F) subsections (b) and (d) of section
20 6043A (relating to returns relating to taxable
21 mergers and acquisitions).”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for subpart B of part III of subchapter A of chapter 61
24 is amended by inserting after the item relating to section
25 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to acquisitions after the date of
3 the enactment of this Act.

4 **Subtitle E—International Tax**

5 **SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PUR-** 6 **POSES OF DETERMINING INVESTMENT OF** 7 **EARNINGS IN UNITED STATES PROPERTY.**

8 (a) IN GENERAL.—Subparagraph (A) of section
9 956(c)(2) is amended to read as follows:

10 “(A) obligations of the United States,
11 money, or deposits with—

12 “(i) any bank (as defined by section
13 2(c) of the Bank Holding Company Act of
14 1956 (12 U.S.C. 1841(c)), without regard
15 to subparagraphs (C) and (G) of para-
16 graph (2) of such section), or

17 “(ii) any corporation not described in
18 clause (i) with respect to which a bank
19 holding company (as defined by section
20 2(a) of such Act) or financial holding com-
21 pany (as defined by section 2(p) of such
22 Act) owns directly or indirectly more than
23 80 percent by vote or value of the stock of
24 such corporation;”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN**
5 **THROUGH COMPLETE LIQUIDATION OF**
6 **HOLDING COMPANY.**

7 (a) IN GENERAL.—Section 332 is amended by adding
8 at the end the following new subsection:

9 “(d) RECOGNITION OF GAIN ON LIQUIDATION OF
10 CERTAIN HOLDING COMPANIES.—

11 “(1) IN GENERAL.—In the case of any distribu-
12 tion to a foreign corporation in complete liquidation
13 of an applicable holding company—

14 “(A) subsection (a) and section 331 shall
15 not apply to such distribution, and

16 “(B) such distribution shall be treated as
17 a distribution to which section 301 applies.

18 “(2) APPLICABLE HOLDING COMPANY.—For
19 purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘applicable
21 holding company’ means any domestic
22 corporation—

23 “(i) which is a common parent of an
24 affiliated group,

1 “(ii) stock of which is directly owned
2 by the distributee foreign corporation,

3 “(iii) substantially all of the assets of
4 which consist of stock in other members of
5 such affiliated group, and

6 “(iv) which has not been in existence
7 at all times during the 5 years immediately
8 preceding the date of the liquidation.

9 “(B) AFFILIATED GROUP.—For purposes
10 of this subsection, the term ‘affiliated group’
11 has the meaning given such term by section
12 1504(a) (without regard to paragraphs (2) and
13 (4) of section 1504(b)).

14 “(3) COORDINATION WITH SUBPART F.—If the
15 distributee of a distribution described in paragraph
16 (1) is a controlled foreign corporation (as defined in
17 section 957), then notwithstanding paragraph (1) or
18 subsection (a), such distribution shall be treated as
19 a distribution to which section 331 applies.

20 “(4) REGULATIONS.—The Secretary shall pro-
21 vide such regulations as appropriate to prevent the
22 abuse of this subsection, including regulations which
23 provide, for the purposes of clause (iv) of paragraph
24 (2)(A), that a corporation is not in existence for any
25 period unless it is engaged in the active conduct of

1 a trade or business or owns a significant ownership
2 interest in another corporation so engaged.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to distributions in complete liq-
5 uidation occurring on or after the date of the enactment
6 of this Act.

7 **SEC. 453. PREVENTION OF MISMATCHING OF INTEREST**
8 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
9 **TIONS AND INCOME INCLUSIONS IN TRANS-**
10 **ACTIONS WITH RELATED FOREIGN PERSONS.**

11 (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)
12 (relating to special rule for original issue discount on obli-
13 gation held by related foreign person) is amended by re-
14 designating subparagraph (B) as subparagraph (C) and
15 by inserting after subparagraph (A) the following new sub-
16 paragraph:

17 “(B) SPECIAL RULE FOR CERTAIN FOR-
18 EIGN ENTITIES.—

19 “(i) IN GENERAL.—In the case of any
20 debt instrument having original issue dis-
21 count which is held by a related foreign
22 person which is a foreign personal holding
23 company (as defined in section 552), a
24 controlled foreign corporation (as defined
25 in section 957), or a passive foreign invest-

1 ment company (as defined in section
2 1297), a deduction shall be allowable to
3 the issuer with respect to such original
4 issue discount for any taxable year before
5 the taxable year in which paid only to the
6 extent such original issue discount (re-
7 duced by properly allowable deductions and
8 qualified deficits under section
9 952(c)(1)(B)) is includible during such
10 prior taxable year in the gross income of a
11 United States person who owns (within the
12 meaning of section 958(a)) stock in such
13 corporation.

14 “(ii) SECRETARIAL AUTHORITY.—The
15 Secretary may by regulation exempt trans-
16 actions from the application of clause (i),
17 including any transaction which is entered
18 into by a payor in the ordinary course of
19 a trade or business in which the payor is
20 predominantly engaged.”.

21 (b) INTEREST AND OTHER DEDUCTIBLE
22 AMOUNTS.—Section 267(a)(3) is amended—

23 (1) by striking “The Secretary” and inserting:
24 “(A) IN GENERAL.—The Secretary”, and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(B) SPECIAL RULE FOR CERTAIN FOR-
4 EIGN ENTITIES.—

5 “(i) IN GENERAL.—Notwithstanding
6 subparagraph (A), in the case of any item
7 payable to a foreign personal holding com-
8 pany (as defined in section 552), a con-
9 trolled foreign corporation (as defined in
10 section 957), or a passive foreign invest-
11 ment company (as defined in section
12 1297), a deduction shall be allowable to
13 the payor with respect to such amount for
14 any taxable year before the taxable year in
15 which paid only to the extent that an
16 amount attributable to such item (reduced
17 by properly allowable deductions and quali-
18 fied deficits under section 952(c)(1)(B)) is
19 includible during such prior taxable year in
20 the gross income of a United States person
21 who owns (within the meaning of section
22 958(a)) stock in such corporation.

23 “(ii) SECRETARIAL AUTHORITY.—The
24 Secretary may by regulation exempt trans-
25 actions from the application of clause (i),

1 including any transaction which is entered
2 into by a payor in the ordinary course of
3 a trade or business in which the payor is
4 predominantly engaged and in which the
5 payment of the accrued amounts occurs
6 within 8½ months after accrual or within
7 such other period as the Secretary may
8 prescribe.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to payments accrued on or after
11 the date of the enactment of this Act.

12 **SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE**
13 **CERTAIN FOREIGN SOURCE INCOME.**

14 (a) IN GENERAL.—Section 864(c)(4)(B) (relating to
15 treatment of income from sources without the United
16 States as effectively connected income) is amended by add-
17 ing at the end the following new flush sentence:

18 “Any income or gain which is equivalent to any
19 item of income or gain described in clause (i),
20 (ii), or (iii) shall be treated in the same manner
21 as such item for purposes of this subpara-
22 graph.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 the date of the enactment of this Act.

1 **SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON**
2 **SALE OF CONTROLLED FOREIGN CORPORA-**
3 **TION.**

4 (a) IN GENERAL.—Section 904(f)(3) (relating to dis-
5 positions) is amending by adding at the end the following
6 new subparagraph:

7 “(D) APPLICATION TO CERTAIN DISPOSI-
8 TIONS OF STOCK IN CONTROLLED FOREIGN
9 CORPORATION.—

10 “(i) IN GENERAL.—This paragraph
11 shall apply to an applicable disposition in
12 the same manner as if it were a disposition
13 of property described in subparagraph (A),
14 except that the exception contained in sub-
15 paragraph (C)(i) shall not apply.

16 “(ii) APPLICABLE DISPOSITION.—For
17 purposes of clause (i), the term ‘applicable
18 disposition’ means any disposition of any
19 share of stock in a controlled foreign cor-
20 poration in a transaction or series of trans-
21 actions if, immediately before such trans-
22 action or series of transactions, the tax-
23 payer owned more than 50 percent (by
24 vote or value) of the stock of the controlled
25 foreign corporation.

1 “(iii) EXCEPTION.—A disposition
2 shall not be treated as an applicable dis-
3 position under clause (ii) if it is part of a
4 transaction or series of transactions—

5 “(I) to which section 351 or 721
6 applies, or under which the transferor
7 receives stock in a foreign corporation
8 in exchange for the stock in the con-
9 trolled foreign corporation and the
10 stock received is exchanged basis
11 property (as defined in section
12 7701(a)(44)), and

13 “(II) immediately after which,
14 the transferor owns (by vote or value)
15 at least the same percentage of stock
16 in the controlled foreign corporation
17 (or, if the controlled foreign corpora-
18 tion is not in existence after such
19 transaction or series of transactions,
20 in another foreign corporation stock
21 in which was received by the trans-
22 feror in exchange for stock in the con-
23 trolled foreign corporation) as the per-
24 centage of stock in the controlled for-
25 eign corporation which the taxpayer

1 owned immediately before such trans-
2 action or series of transactions.

3 Clause (i) shall apply to any gain recog-
4 nized on any disposition to which this
5 clause applies.

6 “(iv) CONTROLLED FOREIGN COR-
7 PORATION.—For purposes of this subpara-
8 graph, the term ‘controlled foreign cor-
9 poration’ has the meaning given such term
10 by section 957.

11 “(v) STOCK OWNERSHIP.—For pur-
12 poses of this subparagraph, ownership of
13 stock shall be determined under the rules
14 of subsections (a) and (b) of section 958.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to dispositions after the date of
17 the enactment of this Act.

18 **SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**
19 **CREDIT ON WITHHOLDING TAXES ON INCOME**
20 **OTHER THAN DIVIDENDS.**

21 (a) IN GENERAL.—Section 901 is amended by redess-
22 ignating subsection (l) as subsection (m) and by inserting
23 after subsection (k) the following new subsection:

1 “(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING
2 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS
3 ETC.—

4 “(1) IN GENERAL.—In no event shall a credit
5 be allowed under subsection (a) for any withholding
6 tax (as defined in subsection (k)) on any item of in-
7 come or gain with respect to any property if—

8 “(A) such property is held by the recipient
9 of the item for 15 days or less during the 30-
10 day period beginning on the date which is 15
11 days before the date on which the right to re-
12 ceive payment of such item arises, or

13 “(B) to the extent that the recipient of the
14 item is under an obligation (whether pursuant
15 to a short sale or otherwise) to make related
16 payments with respect to positions in substan-
17 tially similar or related property.

18 This paragraph shall not apply to any dividend to
19 which subsection (k) applies.

20 “(2) EXCEPTION FOR TAXES PAID BY DEAL-
21 ERS.—

22 “(A) IN GENERAL.—Paragraph (1) shall
23 not apply to any qualified tax with respect to
24 any property held in the active conduct in a for-

1 eign country of a business as a dealer in such
2 property.

3 “(B) QUALIFIED TAX.—For purposes of
4 subparagraph (A), the term ‘qualified tax’
5 means a tax paid to a foreign country (other
6 than the foreign country referred to in subpara-
7 graph (A)) if—

8 “(i) the item to which such tax is at-
9 tributable is subject to taxation on a net
10 basis by the country referred to in sub-
11 paragraph (A), and

12 “(ii) such country allows a credit
13 against its net basis tax for the full
14 amount of the tax paid to such other for-
15 eign country.

16 “(C) DEALER.—For purposes of subpara-
17 graph (A), the term ‘dealer’ means—

18 “(i) with respect to a security, any
19 person to whom paragraphs (1) and (2) of
20 subsection (k) would not apply by reason
21 of paragraph (4) thereof if such security
22 were stock, and

23 “(ii) with respect to any other prop-
24 erty, any person with respect to whom

1 such property is described in section
2 1221(a)(1).

3 “(D) REGULATIONS.—The Secretary may
4 prescribe such regulations as may be appro-
5 priate to carry out this paragraph, including
6 regulations to prevent the abuse of the excep-
7 tion provided by this paragraph and to treat
8 other taxes as qualified taxes.

9 “(3) EXCEPTIONS.—The Secretary may by reg-
10 ulation provide that paragraph (1) shall not apply to
11 property where the Secretary determines that the
12 application of paragraph (1) to such property is not
13 necessary to carry out the purposes of this sub-
14 section.

15 “(4) CERTAIN RULES TO APPLY.—Rules similar
16 to the rules of paragraphs (5), (6), and (7) of sub-
17 section (k) shall apply for purposes of this sub-
18 section.

19 “(5) DETERMINATION OF HOLDING PERIOD.—
20 Holding periods shall be determined for purposes of
21 this subsection without regard to section 1235 or
22 any similar rule.”.

23 (b) CONFORMING AMENDMENT.—The heading of
24 subsection (k) of section 901 is amended by inserting “ON
25 DIVIDENDS” after “TAXES”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or accrued more
3 than 30 days after the date of the enactment of this Act.

4 **Subtitle F—Other Revenue**
5 **Provisions**

6 **PART I—FINANCIAL INSTRUMENTS**

7 **SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND**
8 **AND PREFERRED STOCK FUNDS, ETC.**

9 (a) IN GENERAL.—Section 1286 (relating to tax
10 treatment of stripped bonds) is amended by redesignating
11 subsection (f) as subsection (g) and by inserting after sub-
12 section (e) the following new subsection:

13 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND
14 AND PREFERRED STOCK FUNDS, ETC.—In the case of an
15 account or entity substantially all of the assets of which
16 consist of bonds, preferred stock, or a combination thereof,
17 the Secretary may by regulations provide that rules simi-
18 lar to the rules of this section and 305(e), as appropriate,
19 shall apply to interests in such account or entity to which
20 (but for this subsection) this section or section 305(e), as
21 the case may be, would not apply.”.

22 (b) CROSS REFERENCE.—Subsection (e) of section
23 305 is amended by adding at the end the following new
24 paragraph:

1 “(7) CROSS REFERENCE.—

“For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).”.

2 (c) EFFECTIVE DATE.—The amendments made by
3 this section shall apply to purchases and dispositions after
4 the date of the enactment of this Act.

5 **SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES**
6 **TO PARTNERSHIPS AND S CORPORATIONS.**

7 (a) IN GENERAL.—Section 168(j) (relating to limita-
8 tion on deduction for interest on certain indebtedness) is
9 amended by redesignating paragraph (8) as paragraph (9)
10 and by inserting after paragraph (7) the following new
11 paragraph:

12 “(8) APPLICATION TO PARTNERSHIPS AND S
13 CORPORATIONS.—

14 “(A) IN GENERAL.—This subsection shall
15 apply to partnerships and S corporations in the
16 same manner as it applies to C corporations.

17 “(B) ALLOCATIONS TO CERTAIN COR-
18 PORATE PARTNERS.—If a C corporation is a
19 partner in a partnership—

20 “(i) the corporation’s allocable share
21 of indebtedness and interest income of the
22 partnership shall be taken into account in
23 applying this subsection to the corporation,
24 and

1 “(ii) if a deduction is not disallowed
2 under this subsection with respect to any
3 interest expense of the partnership, this
4 subsection shall be applied separately in
5 determining whether a deduction is allow-
6 able to the corporation with respect to the
7 corporation’s allocable share of such inter-
8 est expense.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTED-**
13 **NESS INCOME REALIZED ON SATISFACTION**
14 **OF DEBT WITH PARTNERSHIP INTEREST.**

15 (a) IN GENERAL.—Paragraph (8) of section 108(e)
16 (relating to general rules for discharge of indebtedness (in-
17 cluding discharges not in title 11 cases or insolvency)) is
18 amended to read as follows:

19 “(8) INDEBTEDNESS SATISFIED BY CORPORATE
20 STOCK OR PARTNERSHIP INTEREST.—For purposes
21 of determining income of a debtor from discharge of
22 indebtedness, if—

23 “(A) a debtor corporation transfers stock,
24 or

1 “(B) a debtor partnership transfers a cap-
2 ital or profits interest in such partnership,
3 to a creditor in satisfaction of its recourse or non-
4 recourse indebtedness, such corporation or partner-
5 ship shall be treated as having satisfied the indebt-
6 edness with an amount of money equal to the fair
7 market value of the stock or interest. In the case of
8 any partnership, any discharge of indebtedness in-
9 come recognized under this paragraph shall be in-
10 cluded in the distributive shares of taxpayers which
11 were the partners in the partnership immediately be-
12 fore such discharge.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply with respect to cancellations of in-
15 debtedness occurring on or after the date of the enactment
16 of this Act.

17 **SEC. 464. MODIFICATION OF STRADDLE RULES.**

18 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

19 (1) IN GENERAL.—Subparagraph (A) of section
20 1092(a)(2) (relating to special rule for identified
21 straddles) is amended to read as follows:

22 “(A) IN GENERAL.—In the case of any
23 straddle which is an identified straddle—

1 “(i) paragraph (1) shall not apply
2 with respect to identified positions com-
3 prising the identified straddle,

4 “(ii) if there is any loss with respect
5 to any identified position of the identified
6 straddle, the basis of each of the identified
7 offsetting positions in the identified strad-
8 dle shall be increased by an amount which
9 bears the same ratio to the loss as the un-
10 recognized gain with respect to such offset-
11 ting position bears to the aggregate unrec-
12 ognized gain with respect to all such off-
13 setting positions, and

14 “(iii) any loss described in clause (ii)
15 shall not otherwise be taken into account
16 for purposes of this title.”.

17 (2) IDENTIFIED STRADDLE.—Section
18 1092(a)(2)(B) (defining identified straddle) is
19 amended—

20 (A) by striking clause (ii) and inserting the
21 following:

22 “(ii) to the extent provided by regula-
23 tions, the value of each position of which
24 (in the hands of the taxpayer immediately
25 before the creation of the straddle) is not

1 less than the basis of such position in the
2 hands of the taxpayer at the time the
3 straddle is created, and”, and

4 (B) by adding at the end the following new
5 flush sentence:

6 “The Secretary shall prescribe regulations
7 which specify the proper methods for clearly
8 identifying a straddle as an identified straddle
9 (and the positions comprising such straddle),
10 which specify the rules for the application of
11 this section for a taxpayer which fails to prop-
12 erly identify the positions of an identified strad-
13 dle, and which specify the ordering rules in
14 cases where a taxpayer disposes of less than an
15 entire position which is part of an identified
16 straddle.”.

17 (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)
18 (defining unrecognized gain) is amended by redesign-
19 ating subparagraph (B) as subparagraph (C) and
20 by inserting after subparagraph (A) the following
21 new subparagraph:

22 “(B) SPECIAL RULE FOR IDENTIFIED
23 STRADDLES.—For purposes of paragraph
24 (2)(A)(ii), the unrecognized gain with respect to
25 any identified offsetting position shall be the ex-

1 cess of the fair market value of the position at
2 the time of the determination over the fair mar-
3 ket value of the position at the time the tax-
4 payer identified the position as a position in an
5 identified straddle.”.

6 (4) CONFORMING AMENDMENT.—Section
7 1092(e)(2) is amended by striking subparagraph (B)
8 and by redesignating subparagraph (C) as subpara-
9 graph (B).

10 (b) PHYSICALLY SETTLED POSITIONS.—Section
11 1092(d) (relating to definitions and special rules) is
12 amended by adding at the end the following new para-
13 graph:

14 “(8) SPECIAL RULES FOR PHYSICALLY SET-
15 TLED POSITIONS.—For purposes of subsection (a), if
16 a taxpayer settles a position which is part of a strad-
17 dle by delivering property to which the position re-
18 lates (and such position, if terminated, would result
19 in a realization of a loss), then such taxpayer shall
20 be treated as if such taxpayer—

21 “(A) terminated the position for its fair
22 market value immediately before the settlement,
23 and

24 “(B) sold the property so delivered by the
25 taxpayer at its fair market value.”.

1 (c) REPEAL OF STOCK EXCEPTION.—

2 (1) IN GENERAL.—Paragraph (3) of section
3 1092(d) (relating to definitions and special rules) is
4 amended to read as follows:

5 “(3) SPECIAL RULES FOR STOCK.—For pur-
6 poses of paragraph (1)—

7 “(A) IN GENERAL.—The term ‘personal
8 property’ includes—

9 “(i) any stock which is a part of a
10 straddle at least 1 of the offsetting posi-
11 tions of which is a position with respect to
12 such stock or substantially similar or re-
13 lated property, or

14 “(ii) any stock of a corporation
15 formed or availed of to take positions in
16 personal property which offset positions
17 taken by any shareholder.

18 “(B) RULE FOR APPLICATION.—For pur-
19 poses of determining whether subsection (e) ap-
20 plies to any transaction with respect to stock
21 described in subparagraph (A)(ii), all includible
22 corporations of an affiliated group (within the
23 meaning of section 1504(a)) shall be treated as
24 1 taxpayer.”.

1 (2) CONFORMING AMENDMENT.—Section
2 1258(d)(1) is amended by striking “; except that the
3 term ‘personal property’ shall include stock”.

4 (d) MODIFICATIONS OF QUALIFIED COVERED CALL
5 EXCEPTION.—

6 (1) MARKETS ON WHICH OPTIONS MAY BE
7 TRADED.—

8 (A) IN GENERAL.—Section
9 1092(c)(4)(B)(i) is amended by striking “or
10 other market which the Secretary determines
11 has rules adequate to carry out the purposes of
12 this paragraph”.

13 (B) REGULATIONS.—Section
14 1092(c)(4)(H) is amended by adding at the end
15 the following new sentence: “Such regulations
16 shall not add any exchange or market not de-
17 scribed in subparagraph (B)(i) to the exchanges
18 or markets on which qualified covered call op-
19 tions may be traded.”

20 (2) HOLDING PERIOD FOR DIVIDEND EXCLU-
21 SION.—The last sentence of section 246(c) is amend-
22 ed by inserting: “, other than a qualified covered call
23 option to which section 1092(f) applies” before the
24 period at the end.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to positions established on or after
3 the date of the enactment of this Act.

4 **SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR**
5 **ALL READILY TRADEABLE DEBT.**

6 (a) IN GENERAL.—Section 453(f)(4)(B) (relating to
7 purchaser evidences of indebtedness payable on demand
8 or readily tradeable) is amended by striking “is issued by
9 a corporation or a government or political subdivision
10 thereof and”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to sales occurring on or after the
13 date of the enactment of this Act.

14 **PART II—CORPORATIONS AND PARTNERSHIPS**
15 **SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS**
16 **TO CREDITORS IN DIVISIVE REORGANIZA-**
17 **TIONS.**

18 (a) IN GENERAL.—Section 361(b)(3) (relating to
19 treatment of transfers to creditors) is amended by adding
20 at the end the following new sentence: “In the case of a
21 reorganization described in section 368(a)(1)(D) with re-
22 spect to which stock or securities of the corporation to
23 which the assets are transferred are distributed in a trans-
24 action which qualifies under section 355, this paragraph
25 shall apply only to the extent that the sum of the money

1 and the fair market value of other property transferred
2 to such creditors does not exceed the adjusted bases of
3 such assets transferred.”.

4 (b) LIABILITIES IN EXCESS OF BASIS.—Section
5 357(c)(1)(B) is amended by inserting “with respect to
6 which stock or securities of the corporation to which the
7 assets are transferred are distributed in a transaction
8 which qualifies under section 355” after “section
9 368(a)(1)(D)”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to transfers of money or other
12 property, or liabilities assumed, in connection with a reor-
13 ganization occurring on or after the date of the enactment
14 of this Act.

15 **SEC. 467. CLARIFICATION OF DEFINITION OF NON-**
16 **QUALIFIED PREFERRED STOCK.**

17 (a) IN GENERAL.—Section 351(g)(3)(A) is amended
18 by adding at the end the following: “Stock shall not be
19 treated as participating in corporate growth to any signifi-
20 cant extent unless there is a real and meaningful likeli-
21 hood of the shareholder actually participating in the earn-
22 ings and growth of the corporation.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to transactions after May 14,
25 2003.

1 **SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED**
2 **GROUP OF CORPORATIONS.**

3 (a) IN GENERAL.—Section 1563(a)(2) (relating to
4 brother-sister controlled group) is amended by striking
5 “possessing—” and all that follows through “(B)” and in-
6 serting “possessing”.

7 (b) APPLICATION OF EXISTING RULES TO OTHER
8 CODE PROVISIONS.—Section 1563(f) (relating to other
9 definitions and rules) is amended by adding at the end
10 the following new paragraph:

11 “(5) BROTHER-SISTER CONTROLLED GROUP
12 DEFINITION FOR PROVISIONS OTHER THAN THIS
13 PART.—

14 “(A) IN GENERAL.—Except as specifically
15 provided in an applicable provision, subsection
16 (a)(2) shall be applied to an applicable provi-
17 sion as if it read as follows:

18 “(2) BROTHER-SISTER CONTROLLED GROUP.—
19 Two or more corporations if 5 or fewer persons who
20 are individuals, estates, or trusts own (within the
21 meaning of subsection (d)(2) stock possessing—

22 “(A) at least 80 percent of the total com-
23 bined voting power of all classes of stock enti-
24 tled to vote, or at least 80 percent of the total
25 value of shares of all classes of stock, of each
26 corporation, and

1 ‘(B) more than 50 percent of the total
2 combined voting power of all classes of stock
3 entitled to vote or more than 50 percent of the
4 total value of shares of all classes of stock of
5 each corporation, taking into account the stock
6 ownership of each such person only to the ex-
7 tent such stock ownership is identical with re-
8 spect to each such corporation.’

9 “(B) APPLICABLE PROVISION.—For pur-
10 poses of this paragraph, an applicable provision
11 is any provision of law (other than this part)
12 which incorporates the definition of controlled
13 group of corporations under subsection (a).”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

17 **SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNEC-**
18 **TION WITH PARTNERSHIP DISTRIBUTIONS**
19 **AND TRANSFERS OF PARTNERSHIP INTER-**
20 **ESTS.**

21 (a) IN GENERAL.—Section 754 is repealed.

22 (b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED
23 PARTNERSHIP PROPERTY.—Section 734 is amended—

1 (1) by striking “, with respect to which the elec-
2 tion provided in section 754 is in effect,” in the mat-
3 ter preceding paragraph (1) of subsection (b),

4 (2) by striking “(as adjusted by section
5 732(d))” both places it appears in subsection (b),

6 (3) by striking the last sentence of subsection
7 (b),

8 (4) by striking subsection (a) and by redesign-
9 nating subsections (b) and (c) as subsections (a) and
10 (b), respectively, and

11 (5) by striking “**OPTIONAL**” in the heading.

12 (c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-
13 ERTY.—Section 743 is amended—

14 (1) by striking “with respect to which the elec-
15 tion provided in section 754 is in effect” in the mat-
16 ter preceding paragraph (1) of subsection (b),

17 (2) by striking subsection (a) and by redesign-
18 nating subsections (b) and (c) as subsections (a) and
19 (b), respectively,

20 (3) by adding at the end the following new sub-
21 section:

22 “(c) ELECTION TO ADJUST BASIS FOR TRANSFERS
23 UPON DEATH OF PARTNER.—Subsection (a) shall not
24 apply and no adjustments shall be made in the case of
25 any transfer of an interest in a partnership upon the death

1 of a partner unless an election to do so is made by the
2 partnership. Such an election shall apply with respect to
3 all such transfers of interests in the partnership. Any elec-
4 tion under section 754 in effect on the date of the enact-
5 ment of this subsection shall constitute an election made
6 under this subsection. Such election may be revoked by
7 the partnership, subject to such limitations as may be pro-
8 vided by regulations prescribed by the Secretary.”, and

9 (4) by striking “**OPTIONAL**” in the heading.

10 (d) CONFORMING AMENDMENTS.—

11 (1) Subsection (d) of section 732 is repealed.

12 (2) Section 755(a) is amended—

13 (A) by striking “section 734(b) (relating to
14 the optional adjustment” and inserting “section
15 734(a) (relating to the adjustment”, and

16 (B) by striking “section 743(b) (relating to
17 the optional adjustment” and inserting “section
18 743(a) (relating to the adjustment”.

19 (3) Section 755(c), as added by this Act, is
20 amended by striking “section 734(b)” and inserting
21 “section 734(a)”.

22 (4) Section 761(e)(2) is amended by striking
23 “optional”.

1 (5) Section 774(a) is amended by striking
2 “743(b)” both places it appears and inserting
3 “743(a)”.

4 (6) The item relating to section 734 in the table
5 of sections for subpart B of part II of subchapter K
6 of chapter 1 is amended by striking “Optional”.

7 (7) The item relating to section 743 in the table
8 of sections for subpart C of part II of subchapter K
9 of chapter 1 is amended by striking “Optional”.

10 (e) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to transfers and distributions made after
14 the date of the enactment of this Act.

15 (2) REPEAL OF SECTION 732(d).—The amend-
16 ments made by subsections (b)(2) and (d)(1) shall
17 apply to—

18 (A) except as provided in subparagraph
19 (B), transfers made after the date of the enact-
20 ment of this Act, and

21 (B) in the case of any transfer made on or
22 before such date to which section 732(d) ap-
23 plies, distributions made after the date which is
24 2 years after such date of enactment.

1 **PART III—DEPRECIATION AND AMORTIZATION**
2 **SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES**
3 **TO SPORTS FRANCHISES.**

4 (a) IN GENERAL.—Section 197(e) (relating to excep-
5 tions to definition of section 197 intangible) is amended
6 by striking paragraph (6) and by redesignating para-
7 graphs (7) and (8) as paragraphs (6) and (7), respectively.

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Section 1056 (relating to basis limitation
10 for player contracts transferred in connection with
11 the sale of a franchise) is repealed.

12 (B) The table of sections for part IV of sub-
13 chapter O of chapter 1 is amended by striking the
14 item relating to section 1056.

15 (2) Section 1245(a) (relating to gain from dis-
16 position of certain depreciable property) is amended
17 by striking paragraph (4).

18 (3) Section 1253 (relating to transfers of fran-
19 chises, trademarks, and trade names) is amended by
20 striking subsection (e).

21 (c) EFFECTIVE DATES.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the amendments made by this section
24 shall apply to property acquired after the date of the
25 enactment of this Act.

1 (2) SECTION 1245.—The amendment made by
2 subsection (b)(2) shall apply to franchises acquired
3 after the date of the enactment of this Act.

4 **SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.**

5 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)
6 (defining 15-year property) is amended by striking “and”
7 at the end of clause (ii), by striking the period at the end
8 of clause (iii) and inserting “, and”, and by adding at the
9 end the following new clause:

10 “(iv) initial clearing and grading land
11 improvements with respect to gas utility
12 property.”.

13 (b) ELECTRIC UTILITY PROPERTY.—Section
14 168(e)(3) is amended by adding at the end the following
15 new subparagraph:

16 “(F) 20-YEAR PROPERTY.—The term ‘20-
17 year property’ means initial clearing and grad-
18 ing land improvements with respect to any elec-
19 tric utility transmission and distribution
20 plant.”.

21 (c) CONFORMING AMENDMENTS.—The table con-
22 tained in section 168(g)(3)(B) is amended—

23 (1) by inserting “or (E)(iv)” after “(E)(iii)”,
24 and

1 (2) by adding at the end the following new
2 item:

“(F) 25”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service after
5 the date of the enactment of this Act.

6 **SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION**
7 **OF CERTAIN PASSENGER AUTOMOBILES.**

8 (a) IN GENERAL.—Section 179(b) of the Internal
9 Revenue Code of 1986 (relating to limitations) is amended
10 by adding at the end the following new paragraph:

11 “(6) LIMITATION ON COST TAKEN INTO AC-
12 COUNT FOR CERTAIN PASSENGER VEHICLES.—

13 “(A) IN GENERAL.—The cost of any sport
14 utility vehicle for any taxable year which may
15 be taken into account under this section shall
16 not exceed \$25,000.

17 “(B) SPORT UTILITY VEHICLE.—For pur-
18 poses of subparagraph (A)—

19 “(i) IN GENERAL.—The term ‘sport
20 utility vehicle’ means any 4-wheeled
21 vehicle—

22 “(I) which is primarily designed
23 or which can be used to carry pas-
24 sengers over public streets, roads, or

1 highways (except any vehicle operated
2 exclusively on a rail or rails),

3 “(II) which is not subject to sec-
4 tion 280F, and

5 “(III) which is rated at not more
6 than 14,000 pounds gross vehicle
7 weight.

8 “(ii) CERTAIN VEHICLES EX-
9 CLUDED.—Such term does not include any
10 vehicle which—

11 “(I) is designed to have a seating
12 capacity of more than 9 persons be-
13 hind the driver’s seat,

14 “(II) is equipped with a cargo
15 area of at least 6 feet in interior
16 length which is an open area or is de-
17 signed for use as an open area but is
18 enclosed by a cap and is not readily
19 accessible directly from the passenger
20 compartment, or

21 “(III) has an integral enclosure,
22 fully enclosing the driver compartment
23 and load carrying device, does not
24 have seating rearward of the driver’s
25 seat, and has no body section pro-

1 truding more than 30 inches ahead of
2 the leading edge of the windshield.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to property placed in service after
5 the date of the enactment of this Act.

6 **SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
7 **TANGIBLES.**

8 (a) **START-UP EXPENDITURES.**—

9 (1) **ALLOWANCE OF DEDUCTION.**—Paragraph
10 (1) of section 195(b) (relating to start-up expendi-
11 tures) is amended to read as follows:

12 “(1) **ALLOWANCE OF DEDUCTION.**—If a tax-
13 payer elects the application of this subsection with
14 respect to any start-up expenditures—

15 “(A) the taxpayer shall be allowed a deduc-
16 tion for the taxable year in which the active
17 trade or business begins in an amount equal to
18 the lesser of—

19 “(i) the amount of start-up expendi-
20 tures with respect to the active trade or
21 business, or

22 “(ii) \$5,000, reduced (but not below
23 zero) by the amount by which such start-
24 up expenditures exceed \$50,000, and

1 “(B) the remainder of such start-up ex-
2 penditures shall be allowed as a deduction rat-
3 ably over the 180-month period beginning with
4 the month in which the active trade or business
5 begins.”.

6 (2) CONFORMING AMENDMENT.—Subsection (b)
7 of section 195 is amended by striking “AMORTIZE”
8 and inserting “DEDUCT” in the heading.

9 (b) ORGANIZATIONAL EXPENDITURES.—Subsection
10 (a) of section 248 (relating to organizational expenditures)
11 is amended to read as follows:

12 “(a) ELECTION TO DEDUCT.—If a corporation elects
13 the application of this subsection (in accordance with reg-
14 ulations prescribed by the Secretary) with respect to any
15 organizational expenditures—

16 “(1) the corporation shall be allowed a deduc-
17 tion for the taxable year in which the corporation be-
18 gins business in an amount equal to the lesser of—

19 “(A) the amount of organizational expendi-
20 tures with respect to the taxpayer, or

21 “(B) \$5,000, reduced (but not below zero)
22 by the amount by which such organizational ex-
23 penditures exceed \$50,000, and

24 “(2) the remainder of such organizational ex-
25 penditures shall be allowed as a deduction ratably

1 over the 180-month period beginning with the month
2 in which the corporation begins business.”.

3 (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-
4 TION FEES OR PARTNERSHIPS.—

5 (1) IN GENERAL.—Section 709(b) (relating to
6 amortization of organization fees) is amended by re-
7 designating paragraph (2) as paragraph (3) and by
8 amending paragraph (1) to read as follows:

9 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
10 payer elects the application of this subsection (in ac-
11 cordance with regulations prescribed by the Sec-
12 retary) with respect to any organizational
13 expenses—

14 “(A) the taxpayer shall be allowed a deduc-
15 tion for the taxable year in which the partner-
16 ship begins business in an amount equal to the
17 lesser of—

18 “(i) the amount of organizational ex-
19 penses with respect to the partnership, or

20 “(ii) \$5,000, reduced (but not below
21 zero) by the amount by which such organi-
22 zational expenses exceed \$50,000, and

23 “(B) the remainder of such organizational
24 expenses shall be allowed as a deduction ratably
25 over the 180-month period beginning with the

1 month in which the partnership begins busi-
2 ness.

3 “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-
4 ZATION PERIOD.—In any case in which a partner-
5 ship is liquidated before the end of the period to
6 which paragraph (1)(B) applies, any deferred ex-
7 penses attributable to the partnership which were
8 not allowed as a deduction by reason of this section
9 may be deducted to the extent allowable under sec-
10 tion 165.”.

11 (2) CONFORMING AMENDMENT.—Subsection (b)
12 of section 709 is amended by striking “AMORTIZA-
13 TION” and inserting “DEDUCTION” in the heading.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to amounts paid or incurred after
16 the date of the enactment of this Act.

17 **SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPER-**
18 **ATIONS.**

19 (a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-
20 EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subpara-
21 graph (A) of section 168(g)(3) (relating to special rules
22 for determining class life) is amended by inserting “(not-
23 withstanding any other subparagraph of this paragraph)”
24 after “shall”.

1 (b) LIMITATION ON DEPRECIATION PERIOD FOR
2 SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Para-
3 graph (1) of section 167(f) is amended by adding at the
4 end the following new subparagraph:

5 “(C) TAX-EXEMPT USE PROPERTY SUB-
6 JECT TO LEASE.—In the case of computer soft-
7 ware which would be tax-exempt use property
8 as defined in subsection (h) of section 168 if
9 such section applied to computer software, the
10 useful life under subparagraph (A) shall not be
11 less than 125 percent of the lease term (within
12 the meaning of section 168(i)(3)).”

13 (c) LEASE TERM TO INCLUDE RELATED SERVICE
14 CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-
15 lating to lease term) is amended by striking “and” at the
16 end of clause (i), by redesignating clause (ii) as clause
17 (iii), and by inserting after clause (i) the following new
18 clause:

19 “(ii) the term of a lease shall include
20 the term of any service contract or similar
21 arrangement (whether or not treated as a
22 lease under section 7701(e))—

23 “(I) which is part of the same
24 transaction (or series of related trans-
25 actions) which includes the lease, and

1 “(II) which is with respect to the
2 property subject to the lease or sub-
3 stantially similar property, and”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to leases entered into after Decem-
6 ber 31, 2003.

7 **SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
8 **PROPERTY USED BY GOVERNMENTS OR**
9 **OTHER TAX-EXEMPT ENTITIES.**

10 (a) IN GENERAL.—Subpart C of part II of sub-
11 chapter E of chapter 1 (relating to taxable year for which
12 deductions taken) is amended by adding at the end the
13 following new section:

14 **“SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT**
15 **USE PROPERTY.**

16 “(a) LIMITATION ON LOSSES.—Except as otherwise
17 provided in this section, a tax-exempt use loss for any tax-
18 able year shall not be allowed.

19 “(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—
20 Any tax-exempt use loss with respect to any tax-exempt
21 use property which is disallowed under subsection (a) for
22 any taxable year shall be treated as a deduction with re-
23 spect to such property in the next taxable year.

24 “(c) DEFINITIONS.—For purposes of this section—

1 “(1) TAX-EXEMPT USE LOSS.—The term ‘tax-
2 exempt use loss’ means, with respect to any taxable
3 year, the amount (if any) by which—

4 “(A) the sum of—

5 “(i) the aggregate deductions (other
6 than interest) directly allocable to a tax-ex-
7 empt use property, plus

8 “(ii) the aggregate deductions for in-
9 terest properly allocable to such property,
10 exceed

11 “(B) the aggregate income from such
12 property.

13 “(2) TAX-EXEMPT USE PROPERTY.—The term
14 ‘tax-exempt use property’ has the meaning given to
15 such term by section 168(h) (without regard to
16 paragraph (1)(C) or (3) thereof and determined as
17 if property described in section 167(f)(1)(B) were
18 tangible property). Such term shall not include prop-
19 erty with respect to which the credit under section
20 42 is allowed and which, but for this sentence, would
21 be tax-exempt property solely by reason of section
22 168(h)(6).

23 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-
24 tion shall not apply to any lease of property which meets
25 the requirements of all of the following paragraphs:

1 “(1) PROPERTY NOT FINANCED WITH TAX-EX-
2 EMPT BONDS OR FEDERAL FUNDS.—A lease of prop-
3 erty meets the requirements of this paragraph if no
4 part of the property was financed (directly or indi-
5 rectly) from—

6 “(A) the proceeds of an obligation the in-
7 terest on which is exempt from tax under sec-
8 tion 103(a) and which (or any refunding bond
9 of which) is outstanding when the lease is en-
10 tered into, or

11 “(B) Federal funds.

12 The Secretary may by regulations provide for a de
13 minimis exception from this paragraph.

14 “(2) AVAILABILITY OF FUNDS.—

15 “(A) IN GENERAL.—A lease of property
16 meets the requirements of this paragraph if (at
17 any time during the lease term) not more than
18 an allowable amount of funds are—

19 “(i) subject to any arrangement re-
20 ferred to in subparagraph (B), or

21 “(ii) set aside or expected to be set
22 aside,

23 to or for the benefit of the lessor or a lender,
24 or to or for the benefit of the lessee to satisfy
25 the lessee’s obligations or options under the

1 lease. Funds shall be treated as described in
2 clause (ii) only if a reasonable person would
3 conclude, based on the facts and circumstances,
4 that such funds are so described.

5 “(B) ARRANGEMENTS.—The arrangements
6 referred to in this subparagraph are—

7 “(i) a defeasance arrangement, a loan
8 by the lessee to the lessor or a lender, a
9 deposit arrangement, a letter of credit
10 collateralized with cash or cash equiva-
11 lents, a payment undertaking agreement, a
12 lease prepayment, a sinking fund arrange-
13 ment, or any similar arrangement (whether
14 or not such arrangement provides credit
15 support), and

16 “(ii) any other arrangement identified
17 by the Secretary in regulations.

18 “(C) ALLOWABLE AMOUNT.—

19 “(i) IN GENERAL.—Except as other-
20 wise provided in this subparagraph, the
21 term ‘allowable amount’ means an amount
22 equal to 20 percent of the lessor’s adjusted
23 basis in the property at the time the lease
24 is entered into.

1 “(ii) HIGHER AMOUNT PERMITTED IN
2 CERTAIN CASES.—To the extent provided
3 in regulations, a higher percentage shall be
4 permitted under clause (i) where necessary
5 because of the credit-worthiness of the les-
6 see. In no event may such regulations per-
7 mit a percentage of more than 50 percent.

8 “(iii) OPTION TO PURCHASE.—If
9 under the lease the lessee has the option to
10 purchase the property for a fixed price or
11 for other than the fair market value of the
12 property (determined at the time of exer-
13 cise), the allowable amount at the time
14 such option may be exercised may not ex-
15 ceed 50 percent of the price at which such
16 option may be exercised.

17 “(iv) NO ALLOWABLE AMOUNT FOR
18 CERTAIN ARRANGEMENTS.—The allowable
19 amount shall be zero in the case of any ar-
20 rangement which involves—

21 “(I) a loan from the lessee to the
22 lessor or a lender,

23 “(II) any deposit, letter of credit,
24 or payment undertaking agreement
25 involving a lender, or

1 “(III) any credit support made
2 available to the lessor in which a lend-
3 er (if any) does not have a claim
4 which is senior to the lessor.

5 For purposes of subclause (I), the term
6 ‘loan’ shall not include any amount treated
7 as a loan under section 467 with respect to
8 a section 467 rental agreement.

9 “(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY
10 INVESTMENT.—A lease of property meets the re-
11 quirements of this paragraph if—

12 “(A) the lessor—

13 “(i) has at the time the lease is en-
14 tered into an unconditional at-risk equity
15 investment (as determined by the Sec-
16 retary) in the property of at least 20 per-
17 cent of the lessor’s adjusted basis in the
18 property as of that time, and

19 “(ii) maintains such investment
20 throughout the term of the lease, and

21 “(B) the fair market value of the property
22 at the end of the lease term is reasonably ex-
23 pected to be equal to at least 20 percent of such
24 basis.

1 Subparagraphs (A)(ii) and (B) shall not apply if the
2 lease term is described in section 168(h)(1)(C)(ii),
3 or in the case of qualified technological equipment,
4 is described in section 168(h)(3). For purposes of
5 subparagraph (B), the fair market value at the end
6 of the lease term shall be reduced to the extent that
7 a person other than the lessor bears a risk of loss
8 in the value of the property.

9 “(4) LESSEE MAY NOT BEAR MORE THAN MINI-
10 MAL RISK OF LOSS.—

11 “(A) IN GENERAL.—A lease of property
12 meets the requirements of this paragraph if
13 there is no arrangement under which more than
14 a minimal risk of loss (as determined under
15 regulations) in the value of the property is
16 borne by the lessee.

17 “(B) CERTAIN ARRANGEMENTS FAIL RE-
18 QUIREMENT.—In no event will the requirements
19 of this paragraph be met if there is any ar-
20 rangement under which the lessee bears—

21 “(i) any portion of the loss that would
22 occur if the fair market value of the leased
23 property were 25 percent less than its rea-
24 sonably expected fair market value at the
25 end of the lease term, or

1 “(ii) more than 50 percent of the loss
2 that would occur if the fair market value
3 of the leased property at the time the lease
4 is terminated were zero.

5 “(5) PROPERTY WITH MORE THAN 7-YEAR
6 CLASS LIFE.—In the case of a lease—

7 “(A) of property with a class life (as de-
8 fined in section 168(i)(1)) of more than 7
9 years, and

10 “(B) under which the lessee has the option
11 to purchase the property,
12 the lease meets the requirements of this paragraph
13 only if the purchase price under the option equals
14 the fair market value of the property (determined at
15 the time of exercise).

16 “(6) REGULATORY REQUIREMENTS.—A lease of
17 property meets the requirements of this paragraph if
18 such lease of property meets such requirements as
19 the Secretary may prescribe by regulations.

20 “(e) SPECIAL RULES.—

21 “(1) TREATMENT OF FORMER TAX-EXEMPT
22 USE PROPERTY.—

23 “(A) IN GENERAL.—In the case of any
24 former tax-exempt use property—

1 “(i) any deduction allowable under
2 subsection (b) with respect to such prop-
3 erty for any taxable year shall be allowed
4 only to the extent of any net income (with-
5 out regard to such deduction) from such
6 property for such taxable year, and

7 “(ii) any portion of such unused de-
8 duction remaining after application of
9 clause (i) shall be treated as allowable
10 under subsection (b) with respect to such
11 property in the next taxable year.

12 “(B) FORMER TAX-EXEMPT USE PROP-
13 ERTY.—For purposes of this subsection, the
14 term ‘former tax-exempt use property’ means
15 any property which—

16 “(i) is not tax-exempt use property for
17 the taxable year, but

18 “(ii) was tax-exempt use property for
19 any prior taxable year.

20 “(2) DISPOSITION OF ENTIRE INTEREST IN
21 PROPERTY.—If during the taxable year a taxpayer
22 disposes of the taxpayer’s entire interest in tax-ex-
23 empt use property (or former tax-exempt use prop-
24 erty), rules similar to the rules of section 469(g)
25 shall apply for purposes of this section.

1 “(3) COORDINATION WITH SECTION 469.—This
2 section shall be applied before the application of sec-
3 tion 469.

4 “(f) OTHER DEFINITIONS.—For purposes of this
5 section—

6 “(1) RELATED PARTIES.—The terms ‘lessor’,
7 ‘lessee’, and ‘lender’ include any related party (with-
8 in the meaning of section 197(f)(9)(C)(i)).

9 “(2) LEASE TERM.—The term ‘lease term’ has
10 the meaning given to such term by section 168(i)(3).

11 “(3) LENDER.—The term ‘lender’ means, with
12 respect to any lease, a person that makes a loan to
13 the lessor which is secured (or economically similar
14 to being secured) by the lease or the leased property.

15 “(4) LOAN.—The term ‘loan’ includes any simi-
16 lar arrangement.

17 “(g) REGULATIONS.—The Secretary shall prescribe
18 such regulations as may be necessary or appropriate to
19 carry out the provisions of this section, including regula-
20 tion which—

21 “(1) allow in appropriate cases the aggregation
22 of property subject to the same lease, and

23 “(2) provide for the determination of the alloca-
24 tion of interest expense for purposes of this section.”

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for subpart C of part II of subchapter E of chapter
3 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.”

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to leases entered into after Novem-
6 ber 18, 2003.

7 **PART IV—ADMINISTRATIVE PROVISIONS**

8 **SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ES-**
9 **TIMATED TAX FOR CERTAIN DEEMED ASSET**
10 **SALES.**

11 (a) IN GENERAL.—Paragraph (13) of section 338(h)
12 (relating to tax on deemed sale not taken into account for
13 estimated tax purposes) is amended by adding at the end
14 the following: “The preceding sentence shall not apply
15 with respect to a qualified stock purchase for which an
16 election is made under paragraph (10).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply to transactions occurring after
19 the date of the enactment of this Act.

20 **SEC. 482. EXTENSION OF IRS USER FEES.**

21 (a) IN GENERAL.—Section 7528(c) (relating to ter-
22 mination) is amended by striking “December 31, 2004”
23 and inserting “September 30, 2013”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to requests after the date of the
3 enactment of this Act.

4 **SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
5 **INTEREST ON UNDERPAYMENTS RELATED TO**
6 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
7 **MENT.**

8 (a) DETERMINATION OF PENALTY.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, in the case of an applicable
11 taxpayer—

12 (A) the determination as to whether any
13 interest or applicable penalty is to be imposed
14 with respect to any arrangement to which any
15 initiative described in paragraph (2) applied, or
16 to any underpayment of Federal income tax at-
17 tributable to items arising in connection with
18 any arrangement described in paragraph (2),
19 shall be made without regard to section 6664 of
20 the Internal Revenue Code of 1986, and

21 (B) if any such interest or applicable pen-
22 alty is imposed, the amount of such interest or
23 penalty shall be equal to twice that determined
24 without regard to this section.

1 (2) APPLICABLE TAXPAYER.—For purposes of
2 this subsection, the term “applicable taxpayer”
3 means a taxpayer eligible to participate in—

4 (A) the Department of the Treasury’s Off-
5 shore Voluntary Compliance Initiative, or

6 (B) the Department of the Treasury’s vol-
7 untary disclosure initiative which applies to the
8 taxpayer by reason of the taxpayer’s under-
9 reporting of United States income tax liability
10 through financial arrangements which rely on
11 the use of offshore arrangements which were
12 the subject of the initiative described in sub-
13 paragraph (A).

14 (b) DEFINITIONS AND RULES.—For purposes of this
15 section—

16 (1) APPLICABLE PENALTY.—The term “appli-
17 cable penalty” means any penalty, addition to tax,
18 or fine imposed under chapter 68 of the Internal
19 Revenue Code of 1986.

20 (2) VOLUNTARY OFFSHORE COMPLIANCE INI-
21 TIATIVE.—The term “Voluntary Offshore Compli-
22 ance Initiative” means the program established by
23 the Department of the Treasury in January of 2003
24 under which any taxpayer was eligible to voluntarily
25 disclose previously undisclosed income on assets

1 placed in offshore accounts and accessed through
2 credit card and other financial arrangements.

3 (3) PARTICIPATION.—A taxpayer shall be treat-
4 ed as having participated in the Voluntary Offshore
5 Compliance Initiative if the taxpayer submitted the
6 request in a timely manner and all information re-
7 quested by the Secretary of the Treasury or his dele-
8 gate within a reasonable period of time following the
9 request.

10 (c) EFFECTIVE DATE.—The provisions of this section
11 shall apply to interest, penalties, additions to tax, and
12 fines with respect to any taxable year if as of the date
13 of the enactment of this Act, the assessment of any tax,
14 penalty, or interest with respect to such taxable year is
15 not prevented by the operation of any law or rule of law.

16 **SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**
17 **STALLMENT AGREEMENTS.**

18 (a) IN GENERAL.—

19 (1) Section 6159(a) (relating to authorization
20 of agreements) is amended—

21 (A) by striking “satisfy liability for pay-
22 ment of” and inserting “make payment on”,
23 and

24 (B) by inserting “full or partial” after “fa-
25 cilitate”.

1 (2) Section 6159(c) (relating to Secretary re-
2 quired to enter into installment agreements in cer-
3 tain cases) is amended in the matter preceding para-
4 graph (1) by inserting “full” before “payment”.

5 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT
6 AGREEMENTS EVERY TWO YEARS.—Section 6159, as
7 amended by this Act, is amended by redesignating sub-
8 sections (d), (e), and (f) as subsections (e), (f), and (g),
9 respectively, and inserting after subsection (c) the fol-
10 lowing new subsection:

11 “(d) SECRETARY REQUIRED TO REVIEW INSTALL-
12 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY
13 TWO YEARS.—In the case of an agreement entered into
14 by the Secretary under subsection (a) for partial collection
15 of a tax liability, the Secretary shall review the agreement
16 at least once every 2 years.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to agreements entered into on or
19 after the date of the enactment of this Act.

20 **SEC. 485. EXTENSION OF CUSTOMS USER FEES.**

21 Section 13031(j)(3) of the Consolidated Omnibus
22 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))
23 is amended by striking “March 31, 2004” and inserting
24 “September 30, 2013”.

1 **SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
2 **TEREST ON POTENTIAL UNDERPAYMENTS.**

3 (a) IN GENERAL.—Subchapter A of chapter 67 (re-
4 lating to interest on underpayments) is amended by add-
5 ing at the end the following new section:

6 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
7 **TEREST ON POTENTIAL UNDERPAYMENTS,**
8 **ETC.**

9 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN
10 AS PAYMENT OF TAX.—A taxpayer may make a cash de-
11 posit with the Secretary which may be used by the Sec-
12 retary to pay any tax imposed under subtitle A or B or
13 chapter 41, 42, 43, or 44 which has not been assessed
14 at the time of the deposit. Such a deposit shall be made
15 in such manner as the Secretary shall prescribe.

16 “(b) NO INTEREST IMPOSED.—To the extent that
17 such deposit is used by the Secretary to pay tax, for pur-
18 poses of section 6601 (relating to interest on underpay-
19 ments), the tax shall be treated as paid when the deposit
20 is made.

21 “(c) RETURN OF DEPOSIT.—Except in a case where
22 the Secretary determines that collection of tax is in jeop-
23 ardy, the Secretary shall return to the taxpayer any
24 amount of the deposit (to the extent not used for a pay-
25 ment of tax) which the taxpayer requests in writing.

26 “(d) PAYMENT OF INTEREST.—

1 “(1) IN GENERAL.—For purposes of section
2 6611 (relating to interest on overpayments), a de-
3 posit which is returned to a taxpayer shall be treated
4 as a payment of tax for any period to the extent
5 (and only to the extent) attributable to a disputable
6 tax for such period. Under regulations prescribed by
7 the Secretary, rules similar to the rules of section
8 6611(b)(2) shall apply.

9 “(2) DISPUTABLE TAX.—

10 “(A) IN GENERAL.—For purposes of this
11 section, the term ‘disputable tax’ means the
12 amount of tax specified at the time of the de-
13 posit as the taxpayer’s reasonable estimate of
14 the maximum amount of any tax attributable to
15 disputable items.

16 “(B) SAFE HARBOR BASED ON 30-DAY
17 LETTER.—In the case of a taxpayer who has
18 been issued a 30-day letter, the maximum
19 amount of tax under subparagraph (A) shall
20 not be less than the amount of the proposed de-
21 ficiency specified in such letter.

22 “(3) OTHER DEFINITIONS.—For purposes of
23 paragraph (2)—

1 “(A) DISPUTABLE ITEM.—The term ‘dis-
2 putable item’ means any item of income, gain,
3 loss, deduction, or credit if the taxpayer—

4 “(i) has a reasonable basis for its
5 treatment of such item, and

6 “(ii) reasonably believes that the Sec-
7 retary also has a reasonable basis for dis-
8 allowing the taxpayer’s treatment of such
9 item.

10 “(B) 30-DAY LETTER.—The term ‘30-day
11 letter’ means the first letter of proposed defi-
12 ciency which allows the taxpayer an opportunity
13 for administrative review in the Internal Rev-
14 enue Service Office of Appeals.

15 “(4) RATE OF INTEREST.—The rate of interest
16 allowable under this subsection shall be the Federal
17 short-term rate determined under section 6621(b),
18 compounded daily.

19 “(e) USE OF DEPOSITS.—

20 “(1) PAYMENT OF TAX.—Except as otherwise
21 provided by the taxpayer, deposits shall be treated
22 as used for the payment of tax in the order depos-
23 ited.

1 “(2) RETURNS OF DEPOSITS.—Deposits shall
2 be treated as returned to the taxpayer on a last-in,
3 first-out basis.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for subchapter A of chapter 67 is amended by adding at
6 the end the following new item:

 “Sec. 6603. Deposits made to suspend running of interest on po-
 tential underpayments, etc.”.

7 (c) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to deposits made after the
10 date of the enactment of this Act.

11 (2) COORDINATION WITH DEPOSITS MADE
12 UNDER REVENUE PROCEDURE 84–58.—In the case of
13 an amount held by the Secretary of the Treasury or
14 his delegate on the date of the enactment of this Act
15 as a deposit in the nature of a cash bond deposit
16 pursuant to Revenue Procedure 84–58, the date that
17 the taxpayer identifies such amount as a deposit
18 made pursuant to section 6603 of the Internal Rev-
19 enue Code (as added by this Act) shall be treated as
20 the date such amount is deposited for purposes of
21 such section 6603.

22 **SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.**

23 (a) CONTRACT REQUIREMENTS.—

1 (1) IN GENERAL.—Subchapter A of chapter 64
2 (relating to collection) is amended by adding at the
3 end the following new section:

4 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

5 “(a) IN GENERAL.—Nothing in any provision of law
6 shall be construed to prevent the Secretary from entering
7 into a qualified tax collection contract.

8 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For
9 purposes of this section, the term ‘qualified tax collection
10 contract’ means any contract which—

11 “(1) is for the services of any person (other
12 than an officer or employee of the Treasury Depart-
13 ment)—

14 “(A) to locate and contact any taxpayer
15 specified by the Secretary,

16 “(B) to request full payment from such
17 taxpayer of an amount of Federal tax specified
18 by the Secretary and, if such request cannot be
19 met by the taxpayer, to offer the taxpayer an
20 installment agreement providing for full pay-
21 ment of such amount during a period not to ex-
22 ceed 3 years, and

23 “(C) to obtain financial information speci-
24 fied by the Secretary with respect to such tax-
25 payer,

1 “(2) prohibits each person providing such serv-
2 ices under such contract from committing any act or
3 omission which employees of the Internal Revenue
4 Service are prohibited from committing in the per-
5 formance of similar services,

6 “(3) prohibits subcontractors from—

7 “(A) having contacts with taxpayers,

8 “(B) providing quality assurance services,

9 and

10 “(C) composing debt collection notices, and

11 “(4) permits subcontractors to perform other
12 services only with the approval of the Secretary.

13 “(c) FEES.—The Secretary may retain and use an
14 amount not in excess of 25 percent of the amount collected
15 under any qualified tax collection contract for the costs
16 of services performed under such contract. The Secretary
17 shall keep adequate records regarding amounts so retained
18 and used. The amount credited as paid by any taxpayer
19 shall be determined without regard to this subsection.

20 “(d) NO FEDERAL LIABILITY.—The United States
21 shall not be liable for any act or omission of any person
22 performing services under a qualified tax collection con-
23 tract.

24 “(e) APPLICATION OF FAIR DEBT COLLECTION
25 PRACTICES ACT.—The provisions of the Fair Debt Collec-

1 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply
2 to any qualified tax collection contract, except to the ex-
3 tent superseded by section 6304, section 7602(c), or by
4 any other provision of this title.

5 “(f) CROSS REFERENCES.—

6 “(1) For damages for certain unauthorized col-
7 lection actions by persons performing services under
8 a qualified tax collection contract, see section
9 7433A.

10 “(2) For application of Taxpayer Assistance
11 Orders to persons performing services under a quali-
12 fied tax collection contract, see section 7811(a)(4).”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 7809(a) is amended by insert-
15 ing “6306,” before “7651”.

16 (B) The table of sections for subchapter A
17 of chapter 64 is amended by adding at the end
18 the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”.

19 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED
20 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-
21 ICES UNDER QUALIFIED TAX COLLECTION CON-
22 TRACTS.—

23 (1) IN GENERAL.—Subchapter B of chapter 76
24 (relating to proceedings by taxpayers and third par-

1 ties) is amended by inserting after section 7433 the
2 following new section:

3 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**
4 **IZED COLLECTION ACTIONS BY PERSONS**
5 **PERFORMING SERVICES UNDER QUALIFIED**
6 **TAX COLLECTION CONTRACTS.**

7 “(a) IN GENERAL.—Subject to the modifications pro-
8 vided by subsection (b), section 7433 shall apply to the
9 acts and omissions of any person performing services
10 under a qualified tax collection contract (as defined in sec-
11 tion 6306(b)) to the same extent and in the same manner
12 as if such person were an employee of the Internal Rev-
13 enue Service.

14 “(b) MODIFICATIONS.—For purposes of subsection
15 (a)—

16 “(1) Any civil action brought under section
17 7433 by reason of this section shall be brought
18 against the person who entered into the qualified tax
19 collection contract with the Secretary and shall not
20 be brought against the United States.

21 “(2) Such person and not the United States
22 shall be liable for any damages and costs determined
23 in such civil action.

24 “(3) Such civil action shall not be an exclusive
25 remedy with respect to such person.

1 conduct) is amended by adding at the end the following
2 new subsection:

3 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A
4 QUALIFIED TAX COLLECTION CONTRACT.—An individual
5 shall cease to be permitted to perform any services under
6 any qualified tax collection contract (as defined in section
7 6306(b) of the Internal Revenue Code of 1986) if there
8 is a final determination by the Secretary of the Treasury
9 under such contract that such individual committed any
10 act or omission described under subsection (b) in connec-
11 tion with the performance of such services.”.

12 (e) EFFECTIVE DATE.—The amendments made to
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **PART V—MISCELLANEOUS PROVISIONS**

16 **SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A**
17 **TO LIST OF TAXABLE VACCINES.**

18 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
19 able vaccine) is amended by redesignating subparagraphs
20 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and
21 (M), respectively, and by inserting after subparagraph (H)
22 the following new subparagraph:

23 “(I) Any vaccine against hepatitis A.”.

1 (b) CONFORMING AMENDMENT.—Section
2 9510(c)(1)(A) is amended by striking “October 18, 2000”
3 and inserting “May 8, 2003”.

4 (c) EFFECTIVE DATE.—

5 (1) SALES, ETC.—The amendments made by
6 this section shall apply to sales and uses on or after
7 the first day of the first month which begins more
8 than 4 weeks after the date of the enactment of this
9 Act.

10 (2) DELIVERIES.—For purposes of paragraph
11 (1) and section 4131 of the Internal Revenue Code
12 of 1986, in the case of sales on or before the effec-
13 tive date described in such paragraph for which de-
14 livery is made after such date, the delivery date shall
15 be considered the sale date.

16 **SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A**
17 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
18 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

19 (a) IN GENERAL.—Section 121(d) (relating to special
20 rules for exclusion of gain from sale of principal residence)
21 is amended by adding at the end the following new para-
22 graph:

23 “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-
24 CHANGE.—If a taxpayer acquired property in an ex-
25 change to which section 1031 applied, subsection (a)

1 shall not apply to the sale or exchange of such prop-
2 erty if it occurs during the 5-year period beginning
3 with the date of the acquisition of such property.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to sales or exchanges after the date
6 of the enactment of this Act.

7 **SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR**
8 **SMALL PROPERTY AND CASUALTY INSUR-**
9 **ANCE COMPANIES.**

10 (a) IN GENERAL.—Section 501(c)(15)(A) is amended
11 to read as follows:

12 “(A) Insurance companies (as defined in
13 section 816(a)) other than life (including inter-
14 insurers and reciprocal underwriters) if—

15 “(i) the gross receipts for the taxable
16 year do not exceed \$600,000, and

17 “(ii) more than 50 percent of such
18 gross receipts consist of premiums.”.

19 (b) CONTROLLED GROUP RULE.—Section
20 501(c)(15)(C) is amended by inserting “, except that in
21 applying section 1563 for purposes of section
22 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section
23 1563(b)(2) shall be disregarded” before the period at the
24 end.

1 (c) CONFORMING AMENDMENT.—Clause (i) of sec-
2 tion 831(b)(2)(A) is amended by striking “exceed
3 \$350,000 but”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2003.

7 **SEC. 494. DEFINITION OF INSURANCE COMPANY FOR SEC-**
8 **TION 831.**

9 (a) IN GENERAL.—Section 831 is amended by redес-
10 ignating subsection (c) as subsection (d) and by inserting
11 after subsection (b) the following new subsection:

12 “(c) INSURANCE COMPANY DEFINED.—For purposes
13 of this section, the term ‘insurance company’ has the
14 meaning given to such term by section 816(a).”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2003.

18 **SEC. 495. LIMITATIONS ON DEDUCTION FOR CHARITABLE**
19 **CONTRIBUTIONS OF PATENTS AND SIMILAR**
20 **PROPERTY.**

21 (a) DEDUCTION ALLOWED ONLY TO THE EXTENT OF
22 BASIS.—Section 170(e)(1)(B) (relating to certain con-
23 tributions of ordinary income and capital gain property)
24 is amended by striking “or” at the end of clause (i), by

1 adding “or” at the end of clause (ii), and by inserting
2 after clause (ii) the following new clause:

3 “(iii) of any patent, copyright, trade-
4 mark, trade name, trade secret, know-how,
5 software, or similar property, or applica-
6 tions or registrations of such property.”

7 (b) TREATMENT OF CONTRIBUTIONS WHERE DONOR
8 RECEIVES INTEREST.—Section 170(e) is amended by add-
9 ing at the end the following new paragraph:

10 “(7) SPECIAL RULES FOR CONTRIBUTIONS OF
11 PATENTS AND SIMILAR PROPERTY WHERE DONOR
12 RECEIVES INTEREST.—

13 “(A) DISALLOWANCE OF DEDUCTION.—No
14 deduction shall be allowed under this section
15 with respect to a contribution of property de-
16 scribed in paragraph (1)(B)(iii) if the taxpayer
17 after the contribution has any interest in the
18 property other than a qualified interest.

19 “(B) CONTRIBUTIONS WITH QUALIFIED IN-
20 TEREST.—If a taxpayer after a contribution of
21 property described in paragraph (1)(B)(iii) has
22 a qualified interest in the property—

23 “(i) any payment pursuant to the
24 qualified interest shall be treated as ordi-
25 nary income and shall be includible in

1 gross income of the taxpayer for the tax-
2 able year in which the payment is received
3 by the taxpayer, and

4 “(ii) subsection (f)(3) and section
5 1011(b) shall not apply to the transfer of
6 the property from the taxpayer to the
7 donee.

8 “(C) QUALIFIED INTEREST.—For purposes
9 of this paragraph—

10 “(i) IN GENERAL.—The term ‘quali-
11 fied interest’ means, with respect to any
12 taxpayer, a right to receive from the donee
13 a percentage (not greater than 50 percent)
14 of any royalty payment received by the
15 donee with respect to property described in
16 paragraph (1)(B)(iii) (other than copy-
17 rights which are described in section
18 1221(a)(3) or 1231(b)(1)(C)) contributed
19 by the taxpayer to the donee.

20 “(ii) SECRETARIAL AUTHORITY.—

21 “(I) IN GENERAL.—Except as
22 provided in subclause (II), the Sec-
23 retary may by regulation or other ad-
24 ministrative guidance treat as a quali-
25 fied interest the right to receive other

1 payments from the donee, but only if
2 the donee does not possess a right to
3 receive any payment (whether royals-
4 ties or otherwise) from a third party
5 with respect to the contributed prop-
6 erty.

7 “(II) EXCEPTIONS.—The Sec-
8 retary may not treat as a qualified in-
9 terest the right to receive any pay-
10 ment which provides a benefit to the
11 donor which is greater than the ben-
12 efit retained by the donee or the right
13 to receive any portion of the proceeds
14 from the sale of the property contrib-
15 uted.

16 “(iii) LIMITATION.—An interest shall
17 be treated as a qualified interest under this
18 subparagraph only if the taxpayer has no
19 right to receive any payment described in
20 clause (i) or (ii)(I) after the earlier of the
21 date on which the legal life of the contrib-
22 uted property expires or the date which is
23 20 years after the date of the contribu-
24 tion.”.

25 (c) REPORTING REQUIREMENTS.—

1 (1) IN GENERAL.—Section 6050L(a) (relating
2 to returns regarding certain dispositions of donated
3 property) is amended—

4 (A) by striking “If” and inserting:

5 “(1) DISPOSITIONS OF DONATED PROPERTY.—
6 If”,

7 (B) by redesignating paragraphs (1)
8 through (5) as subparagraphs (A) through (E),
9 respectively, and

10 (C) by adding at the end the following new
11 paragraph:

12 “(2) PAYMENTS OF QUALIFIED INTERESTS.—
13 Each donee of property described in section
14 170(e)(1)(B)(iii) which makes a payment to a donor
15 pursuant to a qualified interest (as defined in sec-
16 tion 170(e)(7)) during any calendar year shall make
17 a return (in accordance with forms and regulations
18 prescribed by the Secretary) showing—

19 “(A) the name, address, and TIN of the
20 payor and the payee with respect to such a pay-
21 ment,

22 “(B) a description, and date of contribu-
23 tion, of the property to which the qualified in-
24 terest relates,

1 “(C) the dates and amounts of any royalty
2 payments received by the donee with respect to
3 such property,

4 “(D) the date and the amount of the pay-
5 ment pursuant to the qualified interest, and

6 “(E) a description of the terms of the
7 qualified interest.”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) The heading for section 6050L is
10 amended by striking “**CERTAIN DISPOSI-**
11 **TIONS OF**”.

12 (B) The item relating to section 6050L in
13 the table of sections for subpart B of part III
14 of subchapter A of chapter 61 is amended by
15 striking “certain dispositions of”.

16 (d) ANTI-ABUSE RULES.—The Secretary of the
17 Treasury may prescribe such regulations or other adminis-
18 trative guidance as may be necessary or appropriate to
19 prevent the avoidance of the purposes of section
20 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986
21 (as added by subsection (a)), including preventing—

22 (1) the circumvention of the reduction of the
23 charitable deduction by embedding or bundling the
24 patent or similar property as part of a charitable

1 contribution of property that includes the patent or
2 similar property,

3 (2) the manipulation of the basis of the prop-
4 erty to increase the amount of the charitable deduc-
5 tion through the use of related persons, pass-thru
6 entities, or other intermediaries, or through the use
7 of any provision of law or regulation (including the
8 consolidated return regulations), and

9 (3) a donor from changing the form of the pat-
10 ent or similar property to property of a form for
11 which different deduction rules would apply.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to contributions made after Octo-
14 ber 1, 2003.

15 **SEC. 496. REPEAL OF 10-PERCENT REHABILITATION TAX**
16 **CREDIT.**

17 Section 47 is amended by adding at the end the fol-
18 lowing new subsection:

19 “(e) TERMINATION.—This section shall not apply to
20 expenditures described in subsection (a)(1) incurred in
21 taxable years beginning after December 31, 2003.”.

1 **SEC. 497. INCREASE IN AGE OF MINOR CHILDREN WHOSE**
2 **UNEARNED INCOME IS TAXED AS IF PAR-**
3 **ENT'S INCOME.**

4 (a) **IN GENERAL.**—Section 1(g)(2)(A) (relating to
5 child to whom subsection applies) is amended by striking
6 “age 14” and inserting “age 18”.

7 (b) **EFFECTIVE DATE.**—The amendment made by
8 this section shall apply to taxable years beginning after
9 December 31, 2003.

10 **SEC. 498. HOLDING PERIOD FOR PREFERRED STOCK.**

11 (a) **IN GENERAL.**—Section 1(h)(11)(B)(iii)(I) is
12 amended to read as follows:

13 “(I) with respect to which the
14 holding period requirements of section
15 246(c) are not met, determined by
16 substituting ‘60 days’ for ‘45’ days
17 each place it appears, by substituting
18 ‘120-day’ for ‘90-day’ each place it
19 appears, and by substituting ‘120
20 days’ for ‘90 days’ and ‘240-day’ for
21 ‘180-day’ in paragraph (2).”

22 (b) **EFFECTIVE DATE.**—The amendments made by
23 this section shall apply to taxable years beginning after
24 the date of the enactment of this Act.

1 **TITLE V—PROTECTION OF**
2 **UNITED STATES WORKERS**
3 **FROM COMPETITION OF FOR-**
4 **EIGN WORKFORCES**

5 **SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
6 **CONTRACTS.**

7 (a) LIMITATIONS.—

8 (1) IN GENERAL.—The Office of Federal Pro-
9 curement Policy Act (41 U.S.C. 403 et seq.) is
10 amended by adding at the end the following new sec-
11 tion:

12 **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
13 **CONTRACTS.**

14 “(a) CONVERSIONS TO CONTRACTOR PERFORMANCE
15 OF FEDERAL ACTIVITIES.—An activity or function of an
16 executive agency that is converted to contractor perform-
17 ance under Office of Management and Budget Circular
18 A–76 may not be performed by the contractor or any sub-
19 contractor at a location outside the United States except
20 to the extent that such activity or function was previously
21 performed by Federal Government employees outside the
22 United States.

23 “(b) OTHER FEDERAL CONTRACTS.—(1) A contract
24 that is entered into by the head of an executive agency
25 may not be performed outside the United States except

1 to meet a requirement of the executive agency for the con-
2 tract to be performed specifically at a location outside the
3 United States.

4 “(2) The prohibition in paragraph (1) does not apply
5 in the case of a contract of an executive agency if—

6 “(A) the President determines in writing that it
7 is necessary in the national security interests of the
8 United States for the contract to be performed out-
9 side the United States; or

10 “(B) the head of such executive agency makes
11 a determination and reports such determination on
12 a timely basis to the Director of the Office of Man-
13 agement and Budget that—

14 “(i) the property or services needed by the
15 executive agency are available only by means of
16 performance of the contract outside the United
17 States; and

18 “(ii) no property or services available by
19 means of performance of the contract inside the
20 United States would satisfy the executive agen-
21 cy’s need.

22 “(3) Paragraph (1) does not apply to the perform-
23 ance of a contract outside the United States under the
24 exception provided in subsection (a).

1 “(c) STATE CONTRACTS.—(1) Except as provided in
2 paragraph (2), funds appropriated for financial assistance
3 for a State may not be disbursed to or for such State dur-
4 ing a fiscal year unless the chief executive of that State
5 has transmitted to the Administrator for Federal Procure-
6 ment Policy, not later than April 1 of the preceding fiscal
7 year, a written certification that none of such funds will
8 be expended for the performance outside the United States
9 of contracts entered into by such State.

10 “(2) The prohibition on disbursement of funds to or
11 for a State under paragraph (1) does not apply with re-
12 spect to the performance of a State contract outside the
13 United States if—

14 “(A) the chief executive of such State—

15 “(i) determines that the property or serv-
16 ices needed by the State are available only by
17 means of performance of the contract outside
18 the United States and no property or services
19 available by means of performance of the con-
20 tract inside the United States would satisfy the
21 State’s need; and

22 “(ii) transmits a notification of such deter-
23 mination to the head of the executive agency of
24 the United States that administers the author-

1 ity under which such funds are disbursed to or
2 for the State; and

3 “(B) the head of the executive agency receiving
4 the notification of such determination—

5 “(i) confirms that the facts warrant the
6 determination;

7 “(ii) approves the determination; and

8 “(iii) transmits a notification of the ap-
9 proval of the determination to the Director of
10 the Office of Management and Budget.

11 “(3) In this subsection, the term ‘State’ means each
12 of the several States of the United States, the District
13 of Columbia, the Commonwealth of Puerto Rico, the Com-
14 monwealth of the Northern Mariana Islands, the Virgin
15 Islands, Guam, American Samoa, and the Trust Territory
16 of the Pacific Islands.

17 “(d) Subsections (b) and (c) shall not apply to pro-
18 curement covered by the World Trade Organization Gov-
19 ernment Procurement Agreement.

20 “(e) NATIONAL SECURITY EXEMPTION.—Subsection
21 (b) shall not apply to any procurement for national secu-
22 rity purposes entered into by—

23 “(1) the Department of Defense or any agency
24 or entity thereof;

1 “(2) the Department of the Army, the Depart-
2 ment of the Navy, the Department of the Air Force,
3 or any agency or entity of any of the military de-
4 partments;

5 “(3) the Department of Homeland Security;

6 “(4) the Department of Energy or any agency
7 or entity thereof, with respect to the national secu-
8 rity programs of that Department; or

9 “(5) any element of the intelligence community.

10 “(f) RESPONSIBILITIES OF OMB.—The Director of
11 the Office of Management and Budget shall—

12 “(1) maintain—

13 “(A) the waivers granted under subsection
14 (b)(2), together with the determinations and
15 certifications on which such waivers were based;
16 and

17 “(B) the notifications received under sub-
18 section (c)(2)(B)(iii); and

19 “(2) submit to Congress promptly after the end
20 of each quarter of each fiscal year a report that sets
21 forth—

22 “(A) the waivers that were granted under
23 subsection (b)(2) during such quarter; and

1 “(B) the notifications that were received
2 under subsection (c)(2)(B)(iii) during such
3 quarter.

4 “(g) ANNUAL GAO REVIEW.—The Comptroller Gen-
5 eral shall—

6 “(1) review, each fiscal year, the waivers grant-
7 ed during such fiscal year under subsection (b)(2)
8 and the disbursements of funds authorized pursuant
9 to the exceptions in subsections (c)(2) and (e); and

10 “(2) promptly after the end of such fiscal year,
11 transmit to Congress a report containing a list of
12 the contracts covered by such waivers and exception
13 together with a brief description of the performance
14 of each such contract to the maximum extent fea-
15 sible outside the United States.”.

16 “(2) CLERICAL AMENDMENT.—The table of sec-
17 tions in section 1(b) of such Act is amended by add-
18 ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

19 “(b) INAPPLICABILITY TO STATES DURING FIRST
20 TWO FISCAL YEARS.—Section 42(c) of the Office of Fed-
21 eral Procurement Policy Act (as added by subsection (a))
22 shall not apply to disbursements of funds to a State dur-
23 ing the fiscal year in which this Act is enacted and the
24 next fiscal year.

1 **SEC. 502. REPEAL OF SUPERSEDED LAW.**

2 Section 647 of the Transportation, Treasury, and
3 Independent Agencies Appropriations Act, 2004 (division
4 F of Public Law 108–199) is amended by striking sub-
5 section (e).

6 **SEC. 503. EFFECTIVE DATE AND APPLICABILITY.**

7 (a) **IN GENERAL.**—This title and the amendments
8 made by this title shall take effect 30 days after the Sec-
9 retary of Commerce certifies that the amendments made
10 by this title will not result in the loss of more jobs than
11 it will protect and will not cause harm to the United States
12 economy. The initial certification shall be made by the
13 Secretary of Commerce no later than 90 days after the
14 enactment of this Act. Such certification must be renewed
15 on or before January 1 of each year in order for the
16 amendments made by this title to be in effect for that
17 year.

18 (b) **CONSISTENCY WITH INTERNATIONAL AGREE-**
19 **MENTS.**—The provisions of this title shall not apply to the
20 extent that they may be inconsistent with obligations
21 under international agreements. Within 90 days of this
22 legislation, the Office of Management and Budget, in con-
23 sultation with the Office of the United States Trade Rep-
24 resentative, shall develop guidelines for the implementa-
25 tion of this provision.

1 **TITLE VI—OTHER PROVISIONS**
2 **Subtitle A—Provisions Relating to**
3 **Housing**

4 **SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.**

5 (a) YEAR HOLIDAY.—Section 143(a)(2)(iv) of the In-
6 ternal Revenue Code of 1986 shall not apply to amounts
7 received during the 1-year period beginning on the date
8 of the enactment of this Act with respect to any bond out-
9 standing on such date.

10 (b) REPEAL OF REQUIRED USE OF CERTAIN PRIN-
11 CIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND
12 FINANCINGS TO REDEEM BONDS.—

13 (1) IN GENERAL.—Subparagraph (A) of section
14 143(a)(2) (defining qualified mortgage issue) is
15 amended by adding “and” at the end of clause (ii),
16 by striking “, and” at the end of clause (iii) and in-
17 serting a period, and by striking clause (iv) and the
18 last sentence.

19 (2) CONFORMING AMENDMENT.—Clause (ii) of
20 section 143(a)(2)(D) is amended by striking “(and
21 clause (iv) of subparagraph (A))”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to bonds issued after
24 the date of the enactment of this Act.

1 **SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.**

2 (a) IN GENERAL.—Paragraph (3) of section 163(h)
3 (relating to qualified residence interest) is amended by
4 adding after subparagraph (D) the following new subpara-
5 graph:

6 “(E) MORTGAGE INSURANCE PREMIUMS
7 TREATED AS INTEREST.—

8 “(i) IN GENERAL.—Premiums paid or
9 accrued for qualified mortgage insurance
10 by a taxpayer during the taxable year in
11 connection with acquisition indebtedness
12 with respect to a qualified residence of the
13 taxpayer shall be treated for purposes of
14 this subsection as qualified residence inter-
15 est.

16 “(ii) PHASEOUT.—The amount other-
17 wise allowable as a deduction under clause
18 (i) shall be reduced (but not below zero) by
19 10 percent of such amount for each \$1,000
20 (\$500 in the case of a married individual
21 filing a separate return) (or fraction there-
22 of) that the taxpayer’s adjusted gross in-
23 come for the taxable year exceeds
24 \$100,000 (\$50,000 in the case of a mar-
25 ried individual filing a separate return).”.

1 (b) DEFINITION AND SPECIAL RULES.—Paragraph
2 (4) of section 163(h) (relating to other definitions and spe-
3 cial rules) is amended by adding at the end the following
4 new subparagraphs:

5 “(E) QUALIFIED MORTGAGE INSUR-
6 ANCE.—The term ‘qualified mortgage insur-
7 ance’ means—

8 “(i) mortgage insurance provided by
9 the Home Loan Guaranty Program of the
10 Department of Veterans Affairs, the Fed-
11 eral Housing Administration, or the Rural
12 Housing Administration, and

13 “(ii) private mortgage insurance (as
14 defined by section 2 of the Homeowners
15 Protection Act of 1998 (12 U.S.C. 4901),
16 as in effect on the date of the enactment
17 of this subparagraph).

18 “(F) SPECIAL RULES FOR PREPAID QUALI-
19 FIED MORTGAGE INSURANCE.—Any amount
20 paid by the taxpayer for qualified mortgage in-
21 surance that is properly allocable to any mort-
22 gage the payment of which extends to periods
23 that are after the close of the taxable year in
24 which such amount is paid shall be chargeable
25 to capital account and shall be treated as paid

1 in such periods to which so allocated. No deduc-
2 tion shall be allowed for the unamortized bal-
3 ance of such account if such mortgage is satis-
4 fied before the end of its term. The preceding
5 sentences shall not apply to amounts paid for
6 qualified mortgage insurance provided by the
7 Department of Veterans Affairs or the Rural
8 Housing Administration.”.

9 (c) INFORMATION RETURNS RELATING TO MORT-
10 GAGE INSURANCE.—Section 6050H (relating to returns
11 relating to mortgage interest received in trade or business
12 from individuals) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(h) RETURNS RELATING TO MORTGAGE INSURANCE
15 PREMIUMS.—

16 “(1) IN GENERAL.—The Secretary may pre-
17 scribe, by regulations, that any person who, in the
18 course of a trade or business, receives from any indi-
19 vidual premiums for mortgage insurance aggregating
20 \$600 or more for any calendar year, shall make a
21 return with respect to each such individual. Such re-
22 turn shall be in such form, shall be made at such
23 time, and shall contain such information as the Sec-
24 retary may prescribe.

1 as in effect on the date of the enactment
2 of this subparagraph).”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to amounts paid or accrued in tax-
5 able years beginning after December 31, 2004, and ending
6 before January 1, 2006.

7 **SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT**
8 **FOR CERTAIN LOW-INCOME HOUSING FOR**
9 **THE ELDERLY.**

10 (a) IN GENERAL.—Section 47 (relating to rehabilita-
11 tion credit) is amended by adding at the end the following
12 new subsection:

13 “(e) SPECIAL RULE REGARDING CERTAIN HISTORIC
14 STRUCTURES.—In the case of any qualified rehabilitation
15 expenditure with respect to any certified historic
16 structure—

17 “(1) which is placed in service after the date of
18 the enactment of this subsection,

19 “(2) which is part of a qualified low-income
20 building with respect to which a credit under section
21 42 is allowed, and

22 “(3) substantially all of the residential rental
23 units of which are used for tenants who have at-
24 tained the age of 65,

1 subsection (a)(2) shall be applied by substituting ‘25 per-
2 cent’ for ‘20 percent’.”.

3 (b) APPLICATION OF MACRS.—The Internal Rev-
4 enue Code of 1986 shall be applied and administered as
5 if paragraph (4)(X) of section 251(d) of the Tax Reform
6 Act of 1986 as applied to the amendments made by section
7 201 of such Act had not been enacted with respect to any
8 property described in such paragraph and placed in service
9 after the date of the enactment of this Act.

10 (c) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to property placed in service
12 after the date of the enactment of this Act.

13 **Subtitle B—Provisions Relating to** 14 **Bonds**

15 **SEC. 611. EXPANSION OF NEW YORK LIBERTY ZONE TAX** 16 **BENEFITS.**

17 (a) ADDITIONAL EXTENSION OF TAX-EXEMPT BOND
18 FINANCING.—Section 1400L(d)(2)(D), as amended by
19 this Act, is amended by striking “2006” and inserting
20 “2010”.

21 (b) EXTENSION OF ADVANCE REFUNDINGS.—Sec-
22 tion 1400L(e)(1) is amended by striking “2005” and in-
23 serting “2006”.

1 **SEC. 612. MODIFICATIONS OF TREATMENT OF QUALIFIED**
2 **ZONE ACADEMY BONDS.**

3 (a) PROCEEDS OF BONDS MAY BE USED FOR CON-
4 STRUCTION AND LAND ACQUISITION.—Paragraph (5) of
5 section 1397E(d) (defining qualified purpose) is
6 amended—

7 (1) by striking “rehabilitating or repairing” in
8 subparagraph (A) and inserting “constructing, reha-
9 bilitating, or repairing”, and

10 (2) by redesignating subparagraphs (B), (C),
11 and (D) as subparagraphs (C), (D), and (E), respec-
12 tively, and by inserting after subparagraph (A) the
13 following:

14 “(B) acquiring the land on which the facil-
15 ity is to be constructed,”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to obligations issued after Decem-
18 ber 31, 2003.

19 **SEC. 613. MODIFICATIONS OF AUTHORITY OF INDIAN TRIB-**
20 **AL GOVERNMENTS TO ISSUE TAX-EXEMPT**
21 **BONDS.**

22 (a) IN GENERAL.—Paragraph (1) of section 7871(c)
23 (relating to Indian tribal governments treated as States
24 for certain purposes) is amended to read as follows:

25 “(1) IN GENERAL.—Subsection (a) of section
26 103 shall apply to any obligation issued by an In-

1 dian tribal government (or subdivision thereof) only
2 if—

3 “(A) such obligation—

4 “(i) is part of an issue 95 percent or
5 more of the net proceeds of which are to
6 be used to finance any facility located on
7 an Indian reservation, and

8 “(ii) is issued before January 1, 2006,
9 or

10 “(B) such obligation is part of an issue
11 substantially all of the proceeds of which are to
12 be used in the exercise of any essential govern-
13 mental function.”.

14 (b) SPECIAL RULES AND DEFINITIONS.—Subsection
15 (c) of section 7871 is amended by inserting at the end
16 the following new paragraph:

17 “(4) SPECIAL RULES AND DEFINITIONS.—

18 “(A) EXCLUSION OF GAMING.—An obliga-
19 tion described in subparagraph (A) or (B) of
20 paragraph (1) may not be used to finance any
21 portion of a building in which class II or III
22 gaming (as defined in section 4 of the Indian
23 Gaming Regulatory Act (25 U.S.C. 2702)) is
24 conducted or housed.

1 results in a change in the condition of such
2 property),

3 “(ii) the manufacture or development
4 of any software product or process if—

5 “(I) it takes more than 6 months
6 to manufacture or develop such prod-
7 uct,

8 “(II) the manufacture or develop-
9 ment could not with due diligence be
10 reasonably expected to occur in less
11 than 6 months, and

12 “(III) the software product or
13 process comprises programs, routines,
14 and attendant documentation devel-
15 oped and maintained for use in com-
16 puter and telecommunications tech-
17 nology, or

18 “(iii) the manufacture or development
19 of any biobased product or bioenergy if—

20 “(I) it takes more than 6 months
21 to manufacture or develop, and

22 “(II) the manufacture or develop-
23 ment could not with due diligence be
24 reasonably expected to occur in less
25 than 6 months.

1 “(D) RELATED FACILITIES.—For purposes
2 of subparagraph (C), the term ‘manufacturing
3 facility’ includes a facility which is directly and
4 functionally related to a manufacturing facility
5 (determined without regard to subparagraph
6 (C)) if—

7 “(i) such facility, including an office
8 facility and a research and development fa-
9 cility, is located on the same site as the
10 manufacturing facility, and

11 “(ii) not more than 40 percent of the
12 net proceeds of the issue are used to pro-
13 vide such facility.

14 “(E) OTHER DEFINITIONS.—For purposes
15 of subparagraph (C)(iii)—

16 “(i) BIOBASED PRODUCT.—The term
17 ‘biobased product’ means a commercial or
18 industrial product (other than food or
19 feed) which utilizes biological products or
20 renewable domestic agricultural (plant,
21 animal, and marine) or forestry materials.

22 “(ii) BIOENERGY.—The term ‘bio-
23 energy’ means biomass used in the produc-
24 tion of energy, including liquid, solid, or
25 gaseous fuels, electricity, and heat.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to obligations issued after the date
3 of the enactment of this Act.

4 **SEC. 615. CONSERVATION BONDS.**

5 (a) TAX-EXEMPT BOND FINANCING.—

6 (1) IN GENERAL.—For purposes of the Internal
7 Revenue Code of 1986, any qualified forest con-
8 servation bond shall be treated as an exempt facility
9 bond under section 142 of such Code.

10 (2) QUALIFIED FOREST CONSERVATION
11 BOND.—For purposes of this section, the term
12 “qualified forest conservation bond” means any bond
13 issued as part of an issue if—

14 (A) 95 percent or more of the net proceeds
15 (as defined in section 150(a)(3) of such Code)
16 of such issue are to be used for qualified project
17 costs,

18 (B) such bond is issued for a qualified or-
19 ganization, and

20 (C) such bond is issued before December
21 31, 2006.

22 (3) LIMITATION ON AGGREGATE AMOUNT
23 ISSUED.—

24 (A) IN GENERAL.—The maximum aggre-
25 gate face amount of bonds which may be issued

1 under this subsection shall not exceed
2 \$1,500,000,000 for all projects (excluding re-
3 funding bonds).

4 (B) ALLOCATION OF LIMITATION.—The
5 limitation described in subparagraph (A) shall
6 be allocated by the Secretary of the Treasury
7 among qualified organizations based on criteria
8 established by the Secretary not later than 180
9 days after the date of the enactment of this sec-
10 tion, after consultation with the Chief of the
11 Forest Service.

12 (4) QUALIFIED PROJECT COSTS.—For purposes
13 of this subsection, the term “qualified project costs”
14 means the sum of—

15 (A) the cost of acquisition by the qualified
16 organization from an unrelated person of for-
17 ests and forest land which at the time of acqui-
18 sition or immediately thereafter are subject to
19 a conservation restriction described in sub-
20 section (c)(2),

21 (B) capitalized interest on the qualified
22 forest conservation bonds for the 3-year period
23 beginning on the date of issuance of such
24 bonds, and

1 (C) credit enhancement fees which con-
2 stitute qualified guarantee fees (within the
3 meaning of section 148 of such Code).

4 (5) SPECIAL RULES.—In applying the Internal
5 Revenue Code of 1986 to any qualified forest con-
6 servation bond, the following modifications shall
7 apply:

8 (A) Section 146 of such Code (relating to
9 volume cap) shall not apply.

10 (B) For purposes of section 147(b) of such
11 Code (relating to maturity may not exceed 120
12 percent of economic life), the land and standing
13 timber acquired with proceeds of qualified for-
14 est conservation bonds shall have an economic
15 life of 35 years.

16 (C) Subsections (c) and (d) of section 147
17 of such Code (relating to limitations on acquisi-
18 tion of land and existing property) shall not
19 apply.

20 (D) Section 57(a)(5) of such Code (relat-
21 ing to tax-exempt interest) shall not apply to
22 interest on qualified forest conservation bonds.

23 (6) TREATMENT OF CURRENT REFUNDING
24 BONDS.—Paragraphs (2)(C) and (3) shall not apply
25 to any bond (or series of bonds) issued to refund a

1 qualified forest conservation bond issued before De-
2 cember 31, 2006, if—

3 (A) the average maturity date of the issue
4 of which the refunding bond is a part is not
5 later than the average maturity date of the
6 bonds to be refunded by such issue,

7 (B) the amount of the refunding bond does
8 not exceed the outstanding amount of the re-
9 funded bond, and

10 (C) the net proceeds of the refunding bond
11 are used to redeem the refunded bond not later
12 than 90 days after the date of the issuance of
13 the refunding bond.

14 For purposes of subparagraph (A), average maturity
15 shall be determined in accordance with section
16 147(b)(2)(A) of such Code.

17 (7) EFFECTIVE DATE.—This subsection shall
18 apply to obligations issued on or after the date
19 which is 180 days after the enactment of this Act.

20 (b) ITEMS FROM QUALIFIED HARVESTING ACTIVI-
21 TIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

22 (1) IN GENERAL.—Income, gains, deductions,
23 losses, or credits from a qualified harvesting activity
24 conducted by a qualified organization shall not be

1 subject to tax or taken into account under subtitle
2 A of the Internal Revenue Code of 1986.

3 (2) LIMITATION.—The amount of income ex-
4 cluded from gross income under paragraph (1) for
5 any taxable year shall not exceed the amount used
6 by the qualified organization to make debt service
7 payments during such taxable year for qualified for-
8 est conservation bonds.

9 (3) QUALIFIED HARVESTING ACTIVITY.—For
10 purposes of paragraph (1)—

11 (A) IN GENERAL.—The term “qualified
12 harvesting activity” means the sale, lease, or
13 harvesting, of standing timber—

14 (i) on land owned by a qualified orga-
15 nization which was acquired with proceeds
16 of qualified forest conservation bonds,

17 (ii) with respect to which a written ac-
18 knowledgement has been obtained by the
19 qualified organization from the State or
20 local governments with jurisdiction over
21 such land that the acquisition lessens the
22 burdens of such government with respect
23 to such land, and

1 (iii) pursuant to a qualified conserva-
2 tion plan adopted by the qualified organi-
3 zation.

4 (B) EXCEPTIONS.—

5 (i) CESSATION AS QUALIFIED ORGANI-
6 ZATION.—The term “qualified harvesting
7 activity” shall not include any sale, lease,
8 or harvesting for any period during which
9 the organization ceases to qualify as a
10 qualified organization.

11 (ii) EXCEEDING LIMITS ON HAR-
12 VESTING.—The term “qualified harvesting
13 activity” shall not include any sale, lease,
14 or harvesting of standing timber on land
15 acquired with proceeds of qualified forest
16 conservation bonds to the extent that—

17 (I) the average annual area of
18 timber harvested from such land ex-
19 ceeds 2.5 percent of the total area of
20 such land or,

21 (II) the quantity of timber re-
22 moved from such land exceeds the
23 quantity which can be removed from
24 such land annually in perpetuity on a

1 sustained-yield basis with respect to
2 such land.

3 The limitations under subclauses (I) and
4 (II) shall not apply to post-fire restoration
5 and rehabilitation or sanitation harvesting
6 of timber stands which are substantially
7 damaged by fire, windthrow, or other ca-
8 tastrophes, or which are in imminent dan-
9 ger from insect or disease attack.

10 (4) TERMINATION.—This subsection shall not
11 apply to any qualified harvesting activity of a quali-
12 fied organization occurring after the date on which
13 there is no outstanding qualified forest conservation
14 bond with respect to such qualified organization or
15 any such bond ceases to be a tax-exempt bond.

16 (5) PARTIAL RECAPTURE OF BENEFITS IF HAR-
17 VESTING LIMIT EXCEEDED.—If, as of the date that
18 this subsection ceases to apply under paragraph (3),
19 the average annual area of timber harvested from
20 the land exceeds the requirement of paragraph
21 (3)(B)(ii)(I), the tax imposed by chapter 1 of the In-
22 ternal Revenue Code of 1986 shall be increased,
23 under rules prescribed by the Secretary of the
24 Treasury, by the sum of the tax benefits attributable
25 to such excess and interest at the underpayment

1 rate under section 6621 of such Code for the period
2 of the underpayment.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) QUALIFIED CONSERVATION PLAN.—The
5 term “qualified conservation plan” means a multiple
6 land use program or plan which—

7 (A) is designed and administered primarily
8 for the purposes of protecting and enhancing
9 wildlife and fish, timber, scenic attributes,
10 recreation, and soil and water quality of the
11 forest and forest land,

12 (B) mandates that conservation of forest
13 and forest land is the single-most significant
14 use of the forest and forest land, and

15 (C) requires that timber harvesting be con-
16 sistent with—

17 (i) restoring and maintaining ref-
18 erence conditions for the region’s ecotype,

19 (ii) restoring and maintaining a rep-
20 resentative sample of young, mid, and late
21 successional forest age classes,

22 (iii) maintaining or restoring the re-
23 sources’ ecological health for purposes of
24 preventing damage from fire, insect, or dis-
25 ease,

1 (iv) maintaining or enhancing wildlife
2 or fish habitat, or

3 (v) enhancing research opportunities
4 in sustainable renewable resource uses.

5 (2) CONSERVATION RESTRICTION.—The con-
6 servation restriction described in this paragraph is a
7 restriction which—

8 (A) is granted in perpetuity to an unre-
9 lated person which is described in section
10 170(h)(3) of such Code and which, in the case
11 of a nongovernmental unit, is organized and op-
12 erated for conservation purposes,

13 (B) meets the requirements of clause (ii)
14 or (iii)(II) of section 170(h)(4)(A) of such
15 Code,

16 (C) obligates the qualified organization to
17 pay the costs incurred by the holder of the con-
18 servation restriction in monitoring compliance
19 with such restriction, and

20 (D) requires an increasing level of con-
21 servation benefits to be provided whenever cir-
22 cumstances allow it.

23 (3) QUALIFIED ORGANIZATION.—The term
24 “qualified organization” means an organization—

1 (A) which is a nonprofit organization sub-
2 stantially all the activities of which are chari-
3 table, scientific, or educational, including ac-
4 quiring, protecting, restoring, managing, and
5 developing forest lands and other renewable re-
6 sources for the long-term charitable, edu-
7 cational, scientific and public benefit,

8 (B) more than half of the value of the
9 property of which consists of forests and forest
10 land acquired with the proceeds from qualified
11 forest conservation bonds,

12 (C) which periodically conducts educational
13 programs designed to inform the public of envi-
14 ronmentally sensitive forestry management and
15 conservation techniques,

16 (D) which has at all times a board of
17 directors—

18 (i) at least 20 percent of the members
19 of which represent the holders of the con-
20 servation restriction described in para-
21 graph (2),

22 (ii) at least 20 percent of the mem-
23 bers of which are public officials, and

24 (iii) not more than one-third of the
25 members of which are individuals who are

1 or were at any time within 5 years before
2 the beginning of a term of membership on
3 the board, an employee of, independent
4 contractor with respect to, officer of, direc-
5 tor of, or held a material financial interest
6 in, a commercial forest products enterprise
7 with which the qualified organization has a
8 contractual or other financial arrangement,
9 (E) the bylaws of which require at least
10 two-thirds of the members of the board of direc-
11 tors to vote affirmatively to approve the quali-
12 fied conservation plan and any change thereto,
13 and
14 (F) upon dissolution, is required to dedi-
15 cate its assets to—
16 (i) an organization described in sec-
17 tion 501(c)(3) of such Code which is orga-
18 nized and operated for conservation pur-
19 poses, or
20 (ii) a governmental unit described in
21 section 170(c)(1) of such Code.
22 (4) UNRELATED PERSON.—The term “unre-
23 lated person” means a person who is not a related
24 person.

1 (5) RELATED PERSON.—A person shall be
2 treated as related to another person if—

3 (A) such person bears a relationship to
4 such other person described in section 267(b)
5 (determined without regard to paragraph (9)
6 thereof), or 707(b)(1), of such Code, deter-
7 mined by substituting “25 percent” for “50
8 percent” each place it appears therein, and

9 (B) in the case such other person is a non-
10 profit organization, if such person controls di-
11 rectly or indirectly more than 25 percent of the
12 governing body of such organization.

13 **Subtitle C—Provisions Relating to** 14 **Depreciation**

15 **SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS** 16 **DEPRECIATION PROPERTY.**

17 (a) IN GENERAL.—Section 168(k)(2)(D) (relating to
18 special rules) is amended by adding at the end the fol-
19 lowing new clause:

20 “(iii) SYNDICATION.—For purposes of
21 subparagraph (A)(ii), if—

22 “(I) property is originally placed
23 in service after September 10, 2001,
24 by the lessor of such property,

1 “(II) such property is sold by
2 such lessor or any subsequent pur-
3 chaser within 3 months after the date
4 so placed in service (or, in the case of
5 multiple units of property subject to
6 the same lease, within 3 months after
7 the date the final unit is placed in
8 service, so long as the period between
9 the time the first unit is placed in
10 service and the time the last unit is
11 placed in service does not exceed 12
12 months), and

13 “(III) the user of such property
14 after the last sale during such 3-
15 month period remains the same as
16 when such property was originally
17 placed in service,

18 such property shall be treated as originally
19 placed in service not earlier than the date
20 of such last sale, so long as no previous
21 owner of such property elects the applica-
22 tion of this subsection with respect to such
23 property.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to sales after the date of the enact-
3 ment of this Act.

4 **SEC. 622. MODIFICATION OF DEPRECIATION ALLOWANCE**
5 **FOR AIRCRAFT.**

6 (a) AIRCRAFT TREATED AS QUALIFIED PROP-
7 erty.—

8 (1) IN GENERAL.—Paragraph (2) of section
9 168(k) is amended by redesignating subparagraphs
10 (C) through (F) as subparagraphs (D) through (G),
11 respectively, and by inserting after subparagraph
12 (B) the following new subparagraph:

13 “(C) CERTAIN AIRCRAFT.—The term
14 ‘qualified property’ includes property—

15 “(i) which meets the requirements of
16 clauses (ii) and (iii) of subparagraph (A),

17 “(ii) which is an aircraft which is not
18 a transportation property (as defined in
19 subparagraph (B)(iii)) other than for agri-
20 cultural or firefighting purposes,

21 “(iii) which is purchased and on which
22 such purchaser, at the time of the contract
23 for purchase, has made a nonrefundable
24 deposit of the lesser of—

25 “(I) 10 percent of the cost, or

1 “(II) \$100,000, and
2 “(iv) which has—
3 “(I) an estimated production pe-
4 riod exceeding 4 months, and
5 “(II) a cost exceeding
6 \$200,000.”.

7 (2) PLACED IN SERVICE DATE.—Clause (iv) of
8 section 168(k)(2)(A) is amended by striking “sub-
9 paragraph (B)” and inserting “subparagraphs (B)
10 and (C)”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 168(k)(2)(B) is amended by adding
13 at the end the following new clause:

14 “(iv) APPLICATION OF SUBPARA-
15 GRAPH.—This subparagraph shall not
16 apply to any property which is described in
17 subparagraph (C).”.

18 (2) Section 168(k)(4)(A)(ii) is amended by
19 striking “paragraph (2)(C)” and inserting “para-
20 graph (2)(D)”.

21 (3) Section 168(k)(4)(B)(iii) is amended by in-
22 serting “and paragraph (2)(C)” after “of this para-
23 graph)”.

1 (4) Section 168(k)(4)(C) is amended by striking
2 “subparagraphs (B) and (D)” and inserting “sub-
3 paragraphs (B), (C), and (E)”.

4 (5) Section 168(k)(4)(D) is amended by strik-
5 ing “Paragraph (2)(E)” and inserting “Paragraph
6 (2)(F)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 the date of the enactment of this Act.

10 **SEC. 623. MODIFICATION OF CLASS LIFE FOR CERTAIN**
11 **TRACK FACILITIES.**

12 (a) 7-YEAR PROPERTY.—Subparagraph (C) of sec-
13 tion 168(e)(3) (relating to classification of certain prop-
14 erty) is amended by redesignating clause (ii) as clause (iii)
15 and by inserting after clause (i) the following new clause:

16 “(ii) any motorsports entertainment
17 complex, and”.

18 (b) DEFINITION.—Section 168(i) (relating to defini-
19 tions and special rules) is amended by adding at the end
20 the following new paragraph:

21 “(15) MOTORSPORTS ENTERTAINMENT COM-
22 PLEX.—

23 “(A) IN GENERAL.—The term ‘motor-
24 sports entertainment complex’ means a racing
25 track facility that is permanently situated on

1 land and which during the applicable period is
2 scheduled to host one or more racing events for
3 automobiles (of any type), trucks, or motor-
4 cycles that are open to the public for the price
5 of admission.

6 “(B) ANCILLARY AND SUPPORT FACILI-
7 TIES.—Such term shall include, if owned by the
8 complex and provided for the benefit of patrons
9 of the complex—

10 “(i) ancillary grounds and facilities
11 and land improvements in support of the
12 complex’s activities (including parking lots,
13 sidewalks, waterways, bridges, fences, and
14 landscaping),

15 “(ii) support facilities (including food
16 and beverage retailing, souvenir vending,
17 and other nonlodging accommodations),
18 and

19 “(iii) appurtenances associated with
20 such facilities and related attractions and
21 amusements (including ticket booths, race
22 track surfaces, suites and hospitality facili-
23 ties, grandstands and viewing structures,
24 props, walls, facilities that support the de-
25 livery of entertainment services, other spe-

1 cial purpose structures, facades, shop inte-
2 riors, and buildings).

3 “(C) EXCEPTION.—Such term shall not in-
4 clude any transportation equipment, adminis-
5 trative services assets, warehouses, administra-
6 tive buildings, hotels, or motels.

7 “(D) APPLICABLE PERIOD.—For purposes
8 of subparagraph (A), the term ‘applicable pe-
9 riod’ means the period ending the later of the
10 last day of—

11 “(i) the 24 month period following the
12 first day of the month in which the asset
13 is or was placed in service, or

14 “(ii) the 24 month period ending De-
15 cember 31, 2003, to the extent that the
16 asset remains in service during such pe-
17 riod.”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
20 this section shall apply to any property placed in
21 service after the date of the enactment of this Act.

22 (2) NO INFERENCE.—Nothing in the amend-
23 ments made by this section shall be construed to af-
24 fect the treatment of expenses incurred on or before
25 the date of the enactment of this Act.

1 **SEC. 624. MINIMUM TAX RELIEF FOR CERTAIN TAXPAYERS.**

2 (a) ELECTION TO INCREASE MINIMUM TAX CREDIT
3 LIMITATION IN LIEU OF BONUS DEPRECIATION.—

4 (1) IN GENERAL.—Section 53 (relating to cred-
5 it for prior year minimum tax liability) is amended
6 by adding at the end the following new subsection:

7 “(e) ADDITIONAL CREDIT IN LIEU OF BONUS DE-
8 PRECIATION.—

9 “(1) IN GENERAL.—In the case of a corpora-
10 tion making an election under this subsection for a
11 taxable year, the limitation under subsection (c)
12 shall be increased by an amount equal to 50 percent
13 of the bonus depreciation amount.

14 “(2) BONUS DEPRECIATION AMOUNT.—For
15 purposes of paragraph (1), the bonus depreciation
16 amount for any taxable year is an amount (not in
17 excess of \$10,000,000) equal to the product of—

18 “(A) 30 percent, and

19 “(B) the excess (if any) of—

20 “(i) the aggregate amount of depre-
21 ciation which would be determined under
22 section 168 for property placed in service
23 during such taxable year if no election
24 under this subsection were made, over

25 “(ii) the aggregate allowance for de-
26 preciation allowable with respect to such

1 property placed in service for such taxable
2 year.

3 “(3) AGGREGATION RULE.—All members of the
4 same controlled group of corporations shall be treat-
5 ed as 1 corporation for purposes of this subsection.

6 “(4) ELECTION.—Sections 168(k) (other than
7 paragraph (2)(F) thereof) shall not apply to any
8 property placed in service during a taxable year by
9 a corporation making an election under this sub-
10 section for such taxable year. An election under this
11 subsection may only be revoked with the consent of
12 the Secretary.

13 “(5) CREDIT REFUNDABLE.—The aggregate in-
14 crease in the credit allowed by this section for any
15 taxable year by reason of this subsection shall for
16 purposes of this title (other than subsection (b)(2)
17 of this section) be treated as a credit allowed to the
18 taxpayer under subpart C.”.

19 (2) CONFORMING AMENDMENTS.—Subsection
20 (k) of section 168 is amended by adding at the end
21 the following new paragraph:

22 “(5) CROSS REFERENCE.—For an election to
23 claim certain minimum tax credits in lieu of the al-
24 lowance determined under this subsection, see sec-
25 tion 53(e).”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to taxable years end-
3 ing after December 31, 2003.

4 (b) USE OF GENERAL BUSINESS CREDITS AGAINST
5 ALTERNATIVE MINIMUM TAX.—

6 (1) IN GENERAL.—Section 38(c) (relating to
7 limitations based on amount of tax) is amended by
8 redesignating paragraph (4) as paragraph (5) and
9 by inserting after paragraph (3) the following new
10 paragraph:

11 “(4) SPECIAL RULE FOR 2004.—Notwith-
12 standing the preceding provisions of this paragraph,
13 in the case of any taxable year beginning in 2004,
14 the credit allowed under subsection (a) shall not ex-
15 ceed the greater of—

16 “(A) the amount determined under this
17 subsection without regard to this paragraph, or

18 “(B) 50 percent of the lesser of—

19 “(i) the amount which would be deter-
20 mined under this subsection if the ten-
21 tative minimum tax were treated as being
22 zero in applying paragraph (1) to such
23 credit, or

24 “(ii) the amount of the current year
25 business credit.”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to taxable years begin-
3 ning in 2004.

4 **Subtitle D—Expansion of Business**
5 **Credit**

6 **SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMER-**
7 **ICAN RESERVATIONS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 chapter A of chapter 1 (relating to business related cred-
10 its) is amended by redesignating sections 45E and 45F
11 as sections 45F and 45G, respectively, and by inserting
12 after section 45E the following new section:

13 **“SEC. 45D. NEW MARKETS TAX CREDIT FOR NATIVE AMER-**
14 **ICAN RESERVATIONS.**

15 “(a) ALLOWANCE OF CREDIT.—

16 “(1) IN GENERAL.—For purposes of section 38,
17 in the case of a taxpayer who holds a qualified eq-
18 uity investment on a credit allowance date of such
19 investment which occurs during the taxable year, the
20 Native American new markets tax credit determined
21 under this section for such taxable year is an
22 amount equal to the applicable percentage of the
23 amount paid to the reservation development entity
24 for such investment at its original issue.

1 “(2) APPLICABLE PERCENTAGE.—For purposes
2 of paragraph (1), the applicable percentage is—

3 “(A) 5 percent with respect to the first 3
4 credit allowance dates, and

5 “(B) 6 percent with respect to the remain-
6 der of the credit allowance dates.

7 “(3) CREDIT ALLOWANCE DATE.—For purposes
8 of paragraph (1), the term ‘credit allowance date’
9 means, with respect to any qualified equity
10 investment—

11 “(A) the date on which such investment is
12 initially made, and

13 “(B) each of the 6 anniversary dates of
14 such date thereafter.

15 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
16 poses of this section—

17 “(1) IN GENERAL.—The term ‘qualified equity
18 investment’ means any equity investment in a res-
19 ervation development entity if—

20 “(A) such investment is acquired by the
21 taxpayer at its original issue (directly or
22 through an underwriter) solely in exchange for
23 cash,

24 “(B) substantially all of such cash is used
25 by the reservation development entity to make

1 qualified low-income reservation investments,
2 and

3 “(C) such investment is designated for
4 purposes of this section by the reservation de-
5 velopment entity.

6 Such term shall not include any equity investment
7 issued by a reservation development entity more
8 than 5 years after the date that such entity receives
9 an allocation under subsection (f). Any allocation
10 not used within such 5-year period may be reallo-
11 cated by the Secretary under subsection (f).

12 “(2) LIMITATION.—The maximum amount of
13 equity investments issued by a reservation develop-
14 ment entity which may be designated under para-
15 graph (1)(C) by such entity shall not exceed the por-
16 tion of the limitation amount allocated under sub-
17 section (f) to such entity.

18 “(3) SAFE HARBOR FOR DETERMINING USE OF
19 CASH.—The requirement of paragraph (1)(B) shall
20 be treated as met if at least 85 percent of the aggre-
21 gate gross assets of the reservation development en-
22 tity are invested in qualified low-income reservation
23 investments.

24 “(4) TREATMENT OF SUBSEQUENT PUR-
25 CHASERS.—The term ‘qualified equity investment’

1 includes any equity investment which would (but for
2 paragraph (1)(A)) be a qualified equity investment
3 in the hands of the taxpayer if such investment was
4 a qualified equity investment in the hands of a prior
5 holder.

6 “(5) REDEMPTIONS.—A rule similar to the rule
7 of section 1202(e)(3) shall apply for purposes of this
8 subsection.

9 “(6) EQUITY INVESTMENT.—The term ‘equity
10 investment’ means—

11 “(A) any stock (other than nonqualified
12 preferred stock as defined in section 351(g)(2))
13 in an entity which is a corporation, and

14 “(B) any capital interest in an entity
15 which is a partnership.

16 “(c) RESERVATION DEVELOPMENT ENTITY.—For
17 purposes of this section—

18 “(1) IN GENERAL.—The term ‘reservation de-
19 velopment entity’ means any domestic corporation or
20 partnership if—

21 “(A) the primary mission of the entity is
22 serving, or providing investment capital for,
23 low-income reservations,

24 “(B) the entity maintains accountability to
25 residents of low-income reservations through

1 their representation on any governing board of
2 the entity or on any advisory board to the enti-
3 ty, and

4 “(C) the entity is certified by the Secretary
5 for purposes of this section as being a reserva-
6 tion development entity.

7 “(2) EXCEPTION.—For purposes of subpara-
8 graph (C) of paragraph (1), the Secretary shall not
9 certify an entity as a reservation development entity
10 if such entity is also certified as a qualified commu-
11 nity development entity under section 45D(c).

12 “(d) QUALIFIED LOW-INCOME RESERVATION IN-
13 VESTMENTS.—For purposes of this section—

14 “(1) IN GENERAL.—The term ‘qualified low-in-
15 come reservation investment’ means—

16 “(A) any capital or equity investment in,
17 or loan to, any qualified active low-income res-
18 ervation business,

19 “(B) the purchase from another reserva-
20 tion development entity of any loan made by
21 such entity which is a qualified low-income res-
22 ervation investment,

23 “(C) financial counseling and other serv-
24 ices specified in regulations prescribed by the

1 Secretary to businesses located in, and resi-
2 dents of, low-income reservations, and

3 “(D) any equity investment in, or loan to,
4 any reservation development entity.

5 “(2) QUALIFIED ACTIVE LOW-INCOME RES-
6 ERVATION BUSINESS.—

7 “(A) IN GENERAL.—For purposes of para-
8 graph (1), the term ‘qualified active low-income
9 reservation business’ means, with respect to any
10 taxable year, any corporation (including a non-
11 profit corporation) or partnership if for such
12 year—

13 “(i) at least 50 percent of the total
14 gross income of such entity is derived from
15 the active conduct of a qualified business
16 within any low-income reservation,

17 “(ii) a substantial portion of the use
18 of the tangible property of such entity
19 (whether owned or leased) is within any
20 low-income reservation,

21 “(iii) a substantial portion of the serv-
22 ices performed for such entity by its em-
23 ployees are performed in any low-income
24 reservation,

1 “(iv) less than 5 percent of the aver-
2 age of the aggregate unadjusted bases of
3 the property of such entity is attributable
4 to collectibles (as defined in section
5 408(m)(2)) other than collectibles that are
6 held primarily for sale to customers in the
7 ordinary course of such business, and

8 “(v) less than 5 percent of the aver-
9 age of the aggregate unadjusted bases of
10 the property of such entity is attributable
11 to nonqualified financial property (as de-
12 fined in section 1397C(e)).

13 “(B) PROPRIETORSHIP.—Such term shall
14 include any business carried on by an individual
15 as a proprietor if such business would meet the
16 requirements of subparagraph (A) were it incor-
17 porated.

18 “(C) PORTIONS OF BUSINESS MAY BE
19 QUALIFIED ACTIVE LOW-INCOME RESERVATION
20 BUSINESS.—The term ‘qualified active low-in-
21 come reservation business’ includes any trades
22 or businesses which would qualify as a qualified
23 active low-income reservation business if such
24 trades or businesses were separately incor-
25 porated.

1 “(3) QUALIFIED BUSINESS.—For purposes of
2 this subsection, the term ‘qualified business’ has the
3 meaning given to such term by section 45D(d)(3).

4 “(e) LOW-INCOME RESERVATION.—For purposes of
5 this section, the term ‘low-income reservation’ means any
6 Indian reservation (as defined in section 168(j)(6)) which
7 has a poverty rate of at least 40 percent.

8 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-
9 MENTS DESIGNATED.—

10 “(1) IN GENERAL.—There is a Native American
11 new markets tax credit limitation of \$50,000,000 for
12 each of calendar years 2004 through 2007.

13 “(2) ALLOCATION OF LIMITATION.—The limita-
14 tion under paragraph (1) shall be allocated by the
15 Secretary among reservation development entities se-
16 lected by the Secretary. In making allocations under
17 the preceding sentence, the Secretary shall give pri-
18 ority to any entity—

19 “(A) with a record of having successfully
20 provided capital or technical assistance to dis-
21 advantaged businesses or communities, or

22 “(B) which intends to satisfy the require-
23 ment under subsection (b)(1)(B) by making
24 qualified low-income reservation investments in
25 1 or more businesses in which persons unre-

1 lated to such entity (within the meaning of sec-
2 tion 267(b) or 707(b)(1)) hold the majority eq-
3 uity interest.

4 “(3) CARRYOVER OF UNUSED LIMITATION.—If
5 the Native American new markets tax credit limita-
6 tion for any calendar year exceeds the aggregate
7 amount allocated under paragraph (2) for such year,
8 such limitation for the succeeding calendar year
9 shall be increased by the amount of such excess. No
10 amount may be carried under the preceding sentence
11 to any calendar year after 2014.

12 “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

13 “(1) IN GENERAL.—If, at any time during the
14 7-year period beginning on the date of the original
15 issue of a qualified equity investment in a reserva-
16 tion development entity, there is a recapture event
17 with respect to such investment, then the tax im-
18 posed by this chapter for the taxable year in which
19 such event occurs shall be increased by the credit re-
20 capture amount.

21 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
22 poses of paragraph (1), the credit recapture amount
23 is an amount equal to the sum of—

24 “(A) the aggregate decrease in the credits
25 allowed to the taxpayer under section 38 for all

1 prior taxable years which would have resulted if
2 no credit had been determined under this sec-
3 tion with respect to such investment, plus

4 “(B) interest at the underpayment rate es-
5 tablished under section 6621 on the amount de-
6 termined under subparagraph (A) for each
7 prior taxable year for the period beginning on
8 the due date for filing the return for the prior
9 taxable year involved.

10 No deduction shall be allowed under this chapter for
11 interest described in subparagraph (B).

12 “(3) RECAPTURE EVENT.—For purposes of
13 paragraph (1), there is a recapture event with re-
14 spect to an equity investment in a reservation devel-
15 opment entity if—

16 “(A) such entity ceases to be a reservation
17 development entity,

18 “(B) the proceeds of the investment cease
19 to be used as required of subsection (b)(1)(B),
20 or

21 “(C) such investment is redeemed by such
22 entity.

23 “(4) SPECIAL RULES.—

24 “(A) TAX BENEFIT RULE.—The tax for
25 the taxable year shall be increased under para-

1 graph (1) only with respect to credits allowed
2 by reason of this section which were used to re-
3 duce tax liability. In the case of credits not so
4 used to reduce tax liability, the carryforwards
5 and carrybacks under section 39 shall be appro-
6 priately adjusted.

7 “(B) NO CREDITS AGAINST TAX.—Any in-
8 crease in tax under this subsection shall not be
9 treated as a tax imposed by this chapter for
10 purposes of determining the amount of any
11 credit under this chapter or for purposes of sec-
12 tion 55.

13 “(h) BASIS REDUCTION.—The basis of any qualified
14 equity investment shall be reduced by the amount of any
15 credit determined under this section with respect to such
16 investment. This subsection shall not apply for purposes
17 of sections 1202, 1400B, and 1400F.

18 “(i) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be appropriate to carry out this
20 section, including regulations—

21 “(1) which limit the credit for investments
22 which are directly or indirectly subsidized by other
23 Federal tax benefits (including the credit under sec-
24 tion 42 and the exclusion from gross income under
25 section 103),

1 “(2) which prevent the abuse of the purposes of
2 this section,

3 “(3) which provide rules for determining wheth-
4 er the requirement of subsection (b)(1)(B) is treated
5 as met,

6 “(4) which impose appropriate reporting re-
7 quirements, and

8 “(5) which apply the provisions of this section
9 to newly formed entities.”.

10 (b) CREDIT MADE PART OF GENERAL BUSINESS
11 CREDIT.—

12 (1) IN GENERAL.—Subsection (b) of section 38
13 is amended by redesignating paragraphs (14) and
14 (15) as paragraphs (15) and (16), respectively, and
15 by inserting after paragraph (13) the following new
16 paragraph:

17 “(14) the Native American new markets tax
18 credit determined under section 45E(a),”.

19 (2) LIMITATION ON CARRYBACK.—Subsection
20 (d) of section 39 is amended by redesignating para-
21 graph (10) as paragraph (11) and by inserting after
22 paragraph (9) the following new paragraph:

23 “(10) NO CARRYBACK OF NATIVE AMERICAN
24 NEW MARKETS TAX CREDIT BEFORE JANUARY 1,
25 2004.—No portion of the unused business credit for

1 any taxable year which is attributable to the credit
2 under section 45E may be carried back to a taxable
3 year ending before January 1, 2004.”.

4 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
5 (c) of section 196 is amended by redesignating paragraph
6 (10) as paragraph (11), by striking “and” at the end of
7 paragraph (9), and by inserting after paragraph (9) the
8 following new paragraph:

9 “(10) the Native American new markets tax
10 credit determined under section 45E(a), and”.

11 (d) CONFORMING AMENDMENTS.—

12 (1) Section 38(b)(15), as redesignated by sub-
13 section (b)(1), is amended—

14 (A) by striking “45E(c)” and inserting
15 “45F(c)”, and

16 (B) by striking “45E(a)” and inserting
17 “45F(a)”.

18 (2) Section 38(b)(16), as redesignated by sub-
19 section (b)(1), is amended by striking “45F(a)” and
20 inserting “45G(a)”.

21 (3) Section 39(d)(11), as redesignated by sub-
22 section (b)(2), is amended by striking “section 45E”
23 and inserting “section 45F”.

1 (2) the competitive procedure through which
2 such allocations are made; and

3 (3) the actions that such Secretary or delegate
4 shall take to ensure that such allocations are prop-
5 erly made to appropriate entities.

6 (g) AUDIT AND REPORT.—Not later than January 31
7 of 2007 and 2010, the Comptroller General of the United
8 States shall, pursuant to an audit of the Native American
9 new markets tax credit program established under section
10 45E of the Internal Revenue Code of 1986 (as added by
11 subsection (a)), report to Congress on such program, in-
12 cluding all reservation development entities that receive an
13 allocation under the Native American new markets credit
14 under such section.

15 (f) GRANTS IN COORDINATION WITH CREDIT.—

16 (1) IN GENERAL.—The Secretary of the Treas-
17 ury is authorized to award a grant of not more than
18 \$1,000,000 to the First Nations Oweesta Corpora-
19 tion.

20 (2) USE OF FUNDS.—The grant awarded under
21 paragraph (1) may be used—

22 (A) to enhance the capacity of people living
23 on low-income reservations (within the meaning
24 of section 45E(e) of the Internal Revenue Code
25 of 1986, as added by this section) to access,

1 apply, control, create, leverage, utilize, and re-
2 tain the financial benefits to such low-income
3 reservations which are attributable to qualified
4 low-income reservation investments (within the
5 meaning of section 45E(d) of such Code), and

6 (B) to provide access to appropriate finan-
7 cial capital for the development of such low-in-
8 come reservations.

9 (3) AUTHORIZATION OF APPROPRIATIONS.—

10 There are authorized to be appropriated \$1,000,000
11 for fiscal years 2004 through 2014 to carry out the
12 provisions of this subsection.

13 **SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE**

14 **CREDIT ADDED TO GENERAL BUSINESS**

15 **CREDIT.**

16 (a) READY RESERVE-NATIONAL GUARD CREDIT.—

17 Subpart D of part IV of subchapter A of chapter 1 (relat-
18 ing to business-related credits), as amended by this Act,
19 is amended by adding at the end the following:

20 **“SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE**

21 **CREDIT.**

22 “(a) GENERAL RULE.—For purposes of section 38,
23 the Ready Reserve-National Guard employee credit deter-
24 mined under this section for any taxable year with respect

1 to each Ready Reserve-National Guard employee of an em-
2 ployer is an amount equal to 50 percent of the lesser of—

3 “(1) the actual compensation amount with re-
4 spect to such employee for such taxable year, or

5 “(2) \$15,000.

6 “(b) DEFINITION OF ACTUAL COMPENSATION
7 AMOUNT.—For purposes of this section, the term ‘actual
8 compensation amount’ means the amount of compensation
9 paid or incurred by an employer with respect to a Ready
10 Reserve-National Guard employee on any day when the
11 employee was absent from employment for the purpose of
12 performing qualified active duty.

13 “(c) LIMITATIONS.—

14 “(1) MAXIMUM PERIOD FOR CREDIT PER EM-
15 PLOYEE.—The maximum period with respect to
16 which the credit may be allowed with respect to any
17 Ready Reserve-National Guard employee shall not
18 exceed the 12-month period beginning on the first
19 day such credit is so allowed with respect to such
20 employee.

21 “(2) DAYS OTHER THAN WORK DAYS.—No
22 credit shall be allowed with respect to any day that
23 a Ready Reserve-National Guard employee who per-
24 forms qualified active duty was not scheduled to

1 work (for reason other than to participate in quali-
2 fied active duty).

3 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) QUALIFIED ACTIVE DUTY.—The term
6 ‘qualified active duty’ means—

7 “(A) active duty, other than the training
8 duty specified in section 10147 of title 10,
9 United States Code (relating to training re-
10 quirements for the Ready Reserve), or section
11 502(a) of title 32, United States Code (relating
12 to required drills and field exercises for the Na-
13 tional Guard), in connection with which an em-
14 ployee is entitled to reemployment rights and
15 other benefits or to a leave of absence from em-
16 ployment under chapter 43 of title 38, United
17 States Code, and

18 “(B) hospitalization incident to such duty.

19 “(2) COMPENSATION.—The term ‘compensa-
20 tion’ means any remuneration for employment,
21 whether in cash or in kind, which is paid or incurred
22 by a taxpayer and which is deductible from the tax-
23 payer’s gross income under section 162(a)(1).

24 “(3) READY RESERVE-NATIONAL GUARD EM-
25 PLOYEE.—The term ‘Ready Reserve-National Guard

1 employee' means an employee who is a member of
2 the Ready Reserve of a reserve component of an
3 Armed Force of the United States as described in
4 sections 10142 and 10101 of title 10, United States
5 Code.

6 “(4) CERTAIN RULES TO APPLY.—Rules similar
7 to the rules of section 52 shall apply.”.

8 (b) CREDIT TO BE PART OF GENERAL BUSINESS
9 CREDIT.—Subsection (b) of section 38 (relating to general
10 business credit), as amended by this Act, is amended by
11 striking “plus” at the end of paragraph (15), by striking
12 the period at the end of paragraph (16) and inserting “,
13 plus”, and by adding at the end the following:

14 “(17) the Ready Reserve-National Guard em-
15 ployee credit determined under section 45H(a).”.

16 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C(a)
17 (relating to rule for employment credits) is amended by
18 inserting “45H(a),” after “45A(a),”.

19 (d) CONFORMING AMENDMENT.—The table of sec-
20 tions for subpart D of part IV of subchapter A of chapter
21 1, as amended by this Act, is amended by inserting after
22 the item relating to section 45G the following:

“Sec. 45H. Ready Reserve-National Guard employee credit.”.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to amounts paid or incurred after

1 the date of the enactment of this Act, in taxable years
2 ending after such date.

3 **SEC. 633. RURAL INVESTMENT TAX CREDIT.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-
5 chapter A of chapter 1 (relating to business related cred-
6 its) is amended by adding at the end the following:

7 **“SEC. 42A. RURAL INVESTMENT CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, the
9 amount of the rural investment credit determined under
10 this section for any taxable year in the credit period shall
11 be an amount equal to the applicable percentage of the
12 eligible basis of each qualified rural investment building.

13 “(b) APPLICABLE PERCENTAGE: 70 PERCENT
14 PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-
15 CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-
16 INGS.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘applicable per-
18 centage’ means the appropriate percentage pre-
19 scribed by the Secretary for the earlier of—

20 “(A) the first month of the credit period
21 with respect to a rural investment building, or

22 “(B) at the election of the taxpayer, the
23 month in which the taxpayer and the rural in-
24 vestment credit agency enter into an agreement
25 with respect to such building (which is binding

1 on such agency, the taxpayer, and all successors
2 in interest) as to the rural investment credit
3 dollar amount to be allocated to such building.

4 A month may be elected under subparagraph (B)
5 only if the election is made not later than the 5th
6 day after the close of such month. Such an election,
7 once made, shall be irrevocable.

8 “(2) METHOD OF PRESCRIBING PERCENT-
9 AGES.—The percentages prescribed by the Secretary
10 for any month shall be percentages which will yield
11 over a 10-year period amounts of credit under sub-
12 section (a) which have a present value equal to—

13 “(A) 70 percent of the eligible basis of a
14 new building, and

15 “(B) 30 percent of the eligible basis of an
16 existing building.

17 “(3) METHOD OF DISCOUNTING.—The present
18 value under paragraph (2) shall be determined—

19 “(A) as of the last day of the 1st year of
20 the 10-year period referred to in paragraph (2),

21 “(B) by using a discount rate equal to 72
22 percent of the average of the annual Federal
23 mid-term rate and the annual Federal long-
24 term rate applicable under section 1274(d)(1)
25 to the month applicable under subparagraph

1 (A) or (B) of paragraph (1) and compounded
2 annually, and

3 “(C) by assuming that the credit allowable
4 under this section for any year is received on
5 the last day of such year.

6 “(c) ELIGIBLE BASIS; QUALIFIED RURAL INVEST-
7 MENT BUILDING.—For purposes of this section—

8 “(1) ELIGIBLE BASIS.—

9 “(A) IN GENERAL.—The eligible basis of
10 any qualified rural investment building for any
11 taxable year shall be determined under rules
12 similar to the rules under section 42(d), except
13 that—

14 “(i) the determination of the adjusted
15 basis of any building shall be made as of
16 the beginning of the credit period, and

17 “(ii) such basis shall include develop-
18 ment costs properly attributable to such
19 building.

20 “(B) DEVELOPMENT COSTS.—For pur-
21 poses of subparagraph (A)(ii), the term ‘devel-
22 opment costs’ includes—

23 “(i) site preparation costs,

24 “(ii) State and local impact fees,

25 “(iii) reasonable development costs,

1 “(iv) professional fees related to basis
2 items,

3 “(v) construction financing costs re-
4 lated to basis items other than land, and

5 “(vi) on-site and adjacent improve-
6 ments required by State and local govern-
7 ments.

8 “(2) QUALIFIED RURAL INVESTMENT BUILD-
9 ING.—The term ‘qualified rural investment building’
10 means any building which is part of a qualified rural
11 investment project at all times during the period—

12 “(A) beginning on the 1st day in the com-
13 pliance period on which such building is part of
14 such an investment project, and

15 “(B) ending on the last day of the compli-
16 ance period with respect to such building.

17 “(d) REHABILITATION EXPENDITURES TREATED AS
18 SEPARATE NEW BUILDING.—Rehabilitation expenditures
19 paid or incurred by the taxpayer with respect to any build-
20 ing shall be treated for purposes of this section as a sepa-
21 rate new building under the rules of section 42(e).

22 “(e) DEFINITION AND SPECIAL RULES RELATING TO
23 CREDIT PERIOD.—

24 “(1) CREDIT PERIOD DEFINED.—For purposes
25 of this section, the term ‘credit period’ means, with

1 respect to any building, the period of 10 taxable
2 years beginning with the taxable year in which the
3 building is first placed in service.

4 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT
5 PERIOD.—

6 “(A) IN GENERAL.—The credit allowable
7 under subsection (a) with respect to any build-
8 ing for the 1st taxable year of the credit period
9 shall be determined by multiplying such credit
10 by the fraction—

11 “(i) the numerator of which is the
12 number of full months of such year during
13 which such building was in service, and

14 “(ii) the denominator of which is 12.

15 “(B) DISALLOWED 1ST YEAR CREDIT AL-
16 LOWED IN 11TH YEAR.—Any reduction by rea-
17 son of subparagraph (A) in the credit allowable
18 (without regard to subparagraph (A)) for the
19 1st taxable year of the credit period shall be al-
20 lowable under subsection (a) for the 1st taxable
21 year following the credit period.

22 “(3) CREDIT PERIOD FOR EXISTING BUILDINGS
23 NOT TO BEGIN BEFORE REHABILITATION CREDIT
24 ALLOWED.—The credit period for an existing build-
25 ing shall not begin before the 1st taxable year of the

1 credit period for rehabilitation expenditures with re-
2 spect to the building.

3 “(f) QUALIFIED RURAL INVESTMENT PROJECT;
4 QUALIFYING COUNTY.—For purposes of this section—

5 “(1) QUALIFIED RURAL INVESTMENT
6 PROJECT.—The term ‘qualified rural investment
7 project’ means any investment project of 1 or more
8 qualified rural investment buildings located in a
9 qualifying county (and, if necessary to the project,
10 any contiguous county) and selected by the State ac-
11 cording to its qualified rural investment plan.

12 “(2) QUALIFYING COUNTY.—The term ‘quali-
13 fying county’ means any county which—

14 “(A) is outside a metropolitan statistical
15 area (defined as such by the Office of Manage-
16 ment and Budget), and

17 “(B) during the 20-year period ending
18 with the calendar year preceding the date of the
19 enactment of this section, has a net out-migra-
20 tion of inhabitants from the county of at least
21 10 percent of the population of the county at
22 the beginning of such period.

23 “(g) LIMITATION ON AGGREGATE CREDIT ALLOW-
24 ABLE WITH RESPECT TO INVESTMENT PROJECTS LO-
25 CATED IN A STATE.—

1 “(1) CREDIT MAY NOT EXCEED CREDIT
2 AMOUNT ALLOCATED TO BUILDING.—The amount of
3 the credit determined under this section for any tax-
4 able year with respect to any building shall not ex-
5 ceed the rural investment credit dollar amount allo-
6 cated to such building under rules similar to the
7 rules of section 42(h)(1).

8 “(2) ALLOCATED CREDIT AMOUNT TO APPLY
9 TO ALL TAXABLE YEARS ENDING DURING OR AFTER
10 CREDIT ALLOCATION YEAR.—Any rural investment
11 credit dollar amount allocated to any building for
12 any calendar year—

13 “(A) shall apply to such building for all
14 taxable years in the credit period ending during
15 or after such calendar year, and

16 “(B) shall reduce the aggregate rural in-
17 vestment credit dollar amount of the allocating
18 agency only for such calendar year.

19 “(3) RURAL INVESTMENT CREDIT DOLLAR
20 AMOUNT FOR AGENCIES.—

21 “(A) IN GENERAL.—The aggregate rural
22 investment credit dollar amount which a rural
23 investment credit agency may allocate for any
24 calendar year is the portion of the State rural
25 investment credit ceiling allocated under this

1 paragraph for such calendar year to such agen-
2 cy.

3 “(B) STATE CEILING INITIALLY ALLO-
4 CATED TO STATE RURAL INVESTMENT CREDIT
5 AGENCIES.—Except as provided in subpara-
6 graphs (D) and (E), the State rural investment
7 credit ceiling for each calendar year shall be al-
8 located to the rural investment credit agency of
9 such State. If there is more than 1 rural invest-
10 ment credit agency of a State, all such agencies
11 shall be treated as a single agency.

12 “(C) STATE RURAL INVESTMENT CREDIT
13 CEILING.—The State rural investment credit
14 ceiling applicable to any State and any calendar
15 year shall be an amount equal to the sum of—

16 “(i) the unused State rural investment
17 credit ceiling (if any) of such State for the
18 preceding calendar year,

19 “(ii) \$185,000 for each qualifying
20 county in the State,

21 “(iii) the amount of State rural in-
22 vestment credit ceiling returned in the cal-
23 endar year, plus

1 “(iv) the amount (if any) allocated
2 under subparagraph (D) to such State by
3 the Secretary.

4 For purposes of clause (i), the unused State
5 rural investment credit ceiling for any calendar
6 year is the excess (if any) of the sum of the
7 amounts described in clauses (ii) through (iv)
8 over the aggregate rural investment credit dol-
9 lar amount allocated for such year. For pur-
10 poses of clause (iii), the amount of State rural
11 investment credit ceiling returned in the cal-
12 endar year equals the rural investment credit
13 dollar amount previously allocated within the
14 State to any investment project which fails to
15 meet the 10 percent test under section
16 42(h)(1)(E)(ii) on a date after the close of the
17 calendar year in which the allocation was made
18 or which does not become a qualified rural in-
19 vestment project within the period required by
20 this section or the terms of the allocation or to
21 any investment project with respect to which an
22 allocation is canceled by mutual consent of the
23 rural investment credit agency and the alloca-
24 tion recipient.

1 “(D) UNUSED RURAL INVESTMENT CREDIT
2 CARRYOVERS ALLOCATED AMONG CERTAIN
3 STATES.—

4 “(i) IN GENERAL.—The unused rural
5 investment credit carryover of a State for
6 any calendar year shall be assigned to the
7 Secretary for allocation among qualified
8 States for the succeeding calendar year.

9 “(ii) UNUSED RURAL INVESTMENT
10 CREDIT CARRYOVER.—For purposes of this
11 subparagraph, the unused rural investment
12 credit carryover of a State for any calendar
13 year is the excess (if any) of the unused
14 State rural investment credit ceiling for
15 such year (as defined in subparagraph
16 (C)(i)) over the excess (if any) of—

17 “(I) the unused State rural in-
18 vestment credit ceiling for the year
19 preceding such year, over

20 “(II) the aggregate rural invest-
21 ment credit dollar amount allocated
22 for such year.

23 “(iii) FORMULA FOR ALLOCATION OF
24 UNUSED RURAL INVESTMENT CREDIT
25 CARRYOVERS AMONG QUALIFIED

1 STATES.—The amount allocated under this
2 subparagraph to a qualified State for any
3 calendar year shall be the amount deter-
4 mined by the Secretary to bear the same
5 ratio to the aggregate unused rural invest-
6 ment credit carryovers of all States for the
7 preceding calendar year as such State’s
8 population for the calendar year bears to
9 the population of all qualified States for
10 the calendar year. For purposes of the pre-
11 ceding sentence, population shall be deter-
12 mined in accordance with section 146(j).

13 “(iv) QUALIFIED STATE.—For pur-
14 poses of this subparagraph, the term
15 ‘qualified State’ means, with respect to a
16 calendar year, any State—

17 “(I) which allocated its entire
18 State rural investment credit ceiling
19 for the preceding calendar year, and

20 “(II) for which a request is made
21 (not later than May 1 of the calendar
22 year) to receive an allocation under
23 clause (iii).

24 “(E) STATE MAY PROVIDE FOR DIF-
25 FERENT ALLOCATION.—Rules similar to the

1 rules of section 146(e) (other than paragraph
2 (2)(B) thereof) shall apply for purposes of this
3 paragraph.

4 “(F) POPULATION.—For purposes of this
5 paragraph, population shall be determined in
6 accordance with section 146(j).

7 “(G) COST-OF-LIVING ADJUSTMENT.—

8 “(i) IN GENERAL.—In the case of a
9 calendar year after 2005, the \$185,000
10 amount in subparagraph (C) shall be in-
11 creased by an amount equal to—

12 “(I) such dollar amount, multi-
13 plied by

14 “(II) the cost-of-living adjust-
15 ment determined under section
16 1(f)(3) for such calendar year by sub-
17 stituting ‘calendar year 2004’ for ‘cal-
18 endar year 1992’ in subparagraph (B)
19 thereof.

20 “(ii) ROUNDING.—Any increase under
21 clause (i) which is not a multiple of \$5,000
22 shall be rounded to the next lowest mul-
23 tiple of \$5,000.

1 “(ii) such organization is determined
2 by the State rural investment credit agency
3 not to be affiliated with or controlled by a
4 for-profit organization; and

5 “(iii) 1 of the exempt purposes of
6 such organization includes the fostering of
7 rural investment.

8 “(D) TREATMENT OF CERTAIN SUBSIDI-
9 ARIES.—

10 “(i) IN GENERAL.—For purposes of
11 this paragraph, a qualified nonprofit orga-
12 nization shall be treated as satisfying the
13 ownership and material participation test
14 of subparagraph (B) if any qualified cor-
15 poration in which such organization holds
16 stock satisfies such test.

17 “(ii) QUALIFIED CORPORATION.—For
18 purposes of clause (i), the term ‘qualified
19 corporation’ means any corporation if 100
20 percent of the stock of such corporation is
21 held by 1 or more qualified nonprofit orga-
22 nizations at all times during the period
23 such corporation is in existence.

24 “(E) STATE MAY NOT OVERRIDE SET-
25 ASIDE.—Nothing in subparagraph (F) of para-

1 graph (3) shall be construed to permit a State
2 not to comply with subparagraph (A) of this
3 paragraph.

4 “(F) CREDITS FOR QUALIFIED NONPROFIT
5 ORGANIZATIONS.—

6 “(i) ALLOWANCE OF CREDIT.—Any
7 credit which would be allowable under sub-
8 section (a) with respect to a qualified rural
9 investment building of a qualified nonprofit
10 organization if such organization were not
11 exempt from tax under this chapter shall
12 be treated as a credit allowable under sub-
13 part C to such organization.

14 “(ii) USE OF CREDIT.—A qualified
15 nonprofit organization may assign, trade,
16 sell, or otherwise transfer any credit allow-
17 able to such organization under subpara-
18 graph (A) to any taxpayer.

19 “(iii) CREDIT NOT INCOME.—A trans-
20 fer under subparagraph (B) of any credit
21 allowable under subparagraph (A) shall not
22 result in income for purposes of section
23 511.

24 “(5) SPECIAL RULES.—

1 “(A) BUILDING MUST BE LOCATED WITH-
2 IN JURISDICTION OF CREDIT AGENCY.—A rural
3 investment credit agency may allocate its aggre-
4 gate rural investment credit dollar amount only
5 to buildings located in the jurisdiction of the
6 governmental unit of which such agency is a
7 part.

8 “(B) AGENCY ALLOCATIONS IN EXCESS OF
9 LIMIT.—If the aggregate rural investment cred-
10 it dollar amounts allocated by a rural invest-
11 ment credit agency for any calendar year exceed
12 the portion of the State rural investment credit
13 ceiling allocated to such agency for such cal-
14 endar year, the rural investment credit dollar
15 amounts so allocated shall be reduced (to the
16 extent of such excess) for buildings in the re-
17 verse of the order in which the allocations of
18 such amounts were made.

19 “(C) CREDIT REDUCED IF ALLOCATED
20 CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT
21 WHICH WOULD BE ALLOWABLE WITHOUT RE-
22 GARD TO SALES CONVENTION, ETC.—

23 “(i) IN GENERAL.—The amount of
24 the credit determined under this section
25 with respect to any building shall not ex-

1 ceed the clause (ii) percentage of the
2 amount of the credit which would (but for
3 this subparagraph) be determined under
4 this section with respect to such building.

5 “(ii) DETERMINATION OF PERCENT-
6 AGE.—For purposes of clause (i), the
7 clause (ii) percentage with respect to any
8 building is the percentage which—

9 “(I) the rural investment credit
10 dollar amount allocated to such build-
11 ing bears to

12 “(II) the credit amount deter-
13 mined in accordance with clause (iii).

14 “(iii) DETERMINATION OF CREDIT
15 AMOUNT.—The credit amount determined
16 in accordance with this clause is the
17 amount of the credit which would (but for
18 this subparagraph) be determined under
19 this section with respect to the building if
20 this section were applied without regard to
21 paragraph (2)(A) of subsection (e).

22 “(D) RURAL INVESTMENT CREDIT AGENCY
23 TO SPECIFY APPLICABLE PERCENTAGE AND
24 MAXIMUM ELIGIBLE BASIS.—In allocating a
25 rural investment credit dollar amount to any

1 building, the rural investment credit agency
2 shall specify the applicable percentage and the
3 maximum eligible basis which may be taken
4 into account under this section with respect to
5 such building. The applicable percentage and
6 maximum eligible basis so specified shall not ex-
7 ceed the applicable percentage and eligible basis
8 determined under this section without regard to
9 this subsection.

10 “(6) OTHER DEFINITIONS.—For purposes of
11 this subsection—

12 “(A) RURAL INVESTMENT CREDIT AGEN-
13 CY.—The term ‘rural investment credit agency’
14 means any agency authorized to carry out this
15 subsection.

16 “(B) POSSESSIONS TREATED AS
17 STATES.—The term ‘State’ includes a posses-
18 sion of the United States.

19 “(7) PORTION OF STATE CEILING SET-ASIDE
20 FOR QUALIFIED RURAL SMALL BUSINESS INVEST-
21 MENT CREDITS.—Not more than 10 percent of the
22 State rural investment credit ceiling for any State
23 for any calendar year may be allocated to qualified
24 rural small business investment credits under section
25 42B.

1 “(h) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) COMPLIANCE PERIOD.—The term ‘compli-
4 ance period’ means, with respect to any building, the
5 period of 10 taxable years beginning with the 1st
6 taxable year of the credit period with respect there-
7 to.

8 “(2) NEW BUILDING.—The term ‘new building’
9 means a building the original use of which begins
10 with the taxpayer.

11 “(3) EXISTING BUILDING.—The term ‘existing
12 building’ means any building which is not a new
13 building.

14 “(4) APPLICATION TO ESTATES AND TRUSTS.—
15 In the case of an estate or trust, the amount of the
16 credit determined under subsection (a) and any in-
17 crease in tax under subsection (i) shall be appor-
18 tioned between the estate or trust and the bene-
19 ficiaries on the basis of the income of the estate or
20 trust allocable to each.

21 “(i) RECAPTURE OF CREDIT.—If—

22 “(1) as of the close of any taxable year in the
23 compliance period, the amount of the eligible basis
24 of any building with respect to the taxpayer is less
25 than

1 “(2) the amount of such basis as of the close
2 of the preceding taxable year,
3 then the taxpayer’s tax under this chapter for the
4 taxable year shall be increased by the credit recap-
5 ture amount determined under rules similar to the
6 rules of section 42(j).

7 “(j) CERTIFICATIONS AND OTHER REPORTS TO SEC-
8 RETARY.—

9 “(1) CERTIFICATION WITH RESPECT TO 1ST
10 YEAR OF CREDIT PERIOD.—Following the close of
11 the 1st taxable year in the credit period with respect
12 to any qualified rural investment building, the tax-
13 payer shall certify to the Secretary (at such time
14 and in such form and in such manner as the Sec-
15 retary prescribes)—

16 “(A) the taxable year, and calendar year,
17 in which such building was first placed in serv-
18 ice,

19 “(B) the eligible basis of such building as
20 of the beginning of the credit period,

21 “(C) the maximum applicable percentage
22 and eligible basis permitted to be taken into ac-
23 count by the appropriate rural investment cred-
24 it agency under subsection (g),

1 “(D) the election made under subsection
2 (f) with respect to the qualified rural invest-
3 ment project of which such building is a part,
4 and

5 “(E) such other information as the Sec-
6 retary may require.

7 In the case of a failure to make the certification re-
8 quired by the preceding sentence on the date pre-
9 scribed therefor, unless it is shown that such failure
10 is due to reasonable cause and not to willful neglect,
11 no credit shall be allowable by reason of subsection
12 (a) with respect to such building for any taxable
13 year ending before such certification is made.

14 “(2) ANNUAL REPORTS TO THE SECRETARY.—
15 The Secretary may require taxpayers to submit an
16 information return (at such time and in such form
17 and manner as the Secretary prescribes) for each
18 taxable year setting forth—

19 “(A) the eligible basis for the taxable year
20 of each qualified rural investment building of
21 the taxpayer,

22 “(B) the information described in para-
23 graph (1)(C) for the taxable year, and

24 “(C) such other information as the Sec-
25 retary may require.

1 The penalty under section 6652(j) shall apply to any
2 failure to submit the return required by the Sec-
3 retary under the preceding sentence on the date pre-
4 scribed therefor.

5 “(3) ANNUAL REPORTS FROM RURAL INVEST-
6 MENT CREDIT AGENCIES.—Each agency which allo-
7 cates any rural investment credit amount to any
8 building for any calendar year shall submit to the
9 Secretary (at such time and in such manner as the
10 Secretary shall prescribe) an annual report
11 specifying—

12 “(A) the amount of rural investment credit
13 amount allocated to each building for such year,

14 “(B) sufficient information to identify each
15 such building and the taxpayer with respect
16 thereto, and

17 “(C) such other information as the Sec-
18 retary may require.

19 The penalty under section 6652(j) shall apply to any
20 failure to submit the report required by the pre-
21 ceding sentence on the date prescribed therefor.

22 “(k) RESPONSIBILITIES OF RURAL INVESTMENT
23 CREDIT AGENCIES.—

24 “(1) PLANS FOR ALLOCATION OF CREDIT
25 AMONG INVESTMENT PROJECTS.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of this section, the rural invest-
3 ment credit dollar amount with respect to any
4 building shall be zero unless—

5 “(i) such amount was allocated pursu-
6 ant to a qualified rural investment plan of
7 the agency which is approved by the gov-
8 ernmental unit (in accordance with rules
9 similar to the rules of section 147(f)(2)
10 (other than subparagraph (B)(ii) thereof))
11 of which such agency is a part,

12 “(ii) such agency notifies the chief ex-
13 ecutive officer (or the equivalent) of the
14 local jurisdiction within which the building
15 is located of such investment project and
16 provides such individual a reasonable op-
17 portunity to comment on the investment
18 project,

19 “(iii) a comprehensive market study
20 of the development needs of individuals in
21 the qualifying county to be served by the
22 investment project is conducted before the
23 credit allocation is made and at the devel-
24 oper’s expense by a disinterested party who
25 is approved by such agency, and

1 “(iv) a written explanation is available
2 to the general public for any allocation of
3 a rural investment credit dollar amount
4 which is not made in accordance with es-
5 tablished priorities and selection criteria of
6 the rural investment credit agency.

7 “(B) QUALIFIED RURAL INVESTMENT
8 PLAN.—For purposes of this section, the term
9 ‘qualified rural investment plan’ means any
10 plan—

11 “(i) which sets forth selection criteria
12 to be used to determine priorities of the
13 rural investment credit agency which are
14 appropriate to qualifying counties,

15 “(ii) which also gives preference in al-
16 locating rural investment credit dollar
17 amounts among selected investment
18 projects to—

19 “(I) investment projects that tar-
20 get those small rural counties with
21 consistently high rates of net out-mi-
22 gration,

23 “(II) investment projects that
24 link the economic development and job
25 creation efforts of 2 or more small

1 rural counties with high rates of net
2 out-migration, and

3 “(III) investment projects that
4 link the economic development and job
5 creation efforts of 1 or more small
6 rural counties in the State with high
7 rates of net out-migration to related
8 efforts in regions of such State experi-
9 encing economic growth, and

10 “(iii) which provides a procedure that
11 the agency (or an agent or other private
12 contractor of such agency) will follow in
13 monitoring for noncompliance with the
14 provisions of this section and in notifying
15 the Internal Revenue Service of such non-
16 compliance which such agency becomes
17 aware of and in monitoring for noncompli-
18 ance through regular site visits.

19 “(C) CERTAIN SELECTION CRITERIA MUST
20 BE USED.—The selection criteria set forth in a
21 qualified rural investment plan must include—

22 “(i) investment project location,

23 “(ii) technology and transportation in-
24 frastructure needs, and

25 “(iii) private development trends.

1 “(2) CREDIT ALLOCATED TO BUILDING NOT TO
2 EXCEED AMOUNT NECESSARY TO ASSURE INVEST-
3 MENT PROJECT FEASIBILITY.—

4 “(A) IN GENERAL.—The rural investment
5 credit dollar amount allocated to an investment
6 project shall not exceed the amount the rural
7 investment credit agency determines is nec-
8 essary for the financial feasibility of the invest-
9 ment project and its viability as a qualified
10 rural investment project throughout the compli-
11 ance period.

12 “(B) AGENCY EVALUATION.—In making
13 the determination under subparagraph (A), the
14 rural investment credit agency shall consider—

15 “(i) the sources and uses of funds and
16 the total financing planned for the invest-
17 ment project,

18 “(ii) any proceeds or receipts expected
19 to be generated by reason of tax benefits,

20 “(iii) the percentage of the rural in-
21 vestment credit dollar amount used for in-
22 vestment project costs other than the cost
23 of intermediaries, and

1 “(iv) the reasonableness of the devel-
2 opmental and operational costs of the in-
3 vestment project.

4 Clause (iii) shall not be applied so as to impede
5 the development of investment projects in hard-
6 to-develop areas.

7 “(C) DETERMINATION MADE WHEN CRED-
8 IT AMOUNT APPLIED FOR AND WHEN BUILDING
9 PLACED IN SERVICE.—

10 “(i) IN GENERAL.—A determination
11 under subparagraph (A) shall be made as
12 of each of the following times:

13 “(I) The application for the rural
14 investment credit dollar amount.

15 “(II) The allocation of the rural
16 investment credit dollar amount.

17 “(III) The date the building is
18 first placed in service.

19 “(ii) CERTIFICATION AS TO AMOUNT
20 OF OTHER SUBSIDIES.—Prior to each de-
21 termination under clause (i), the taxpayer
22 shall certify to the rural investment credit
23 agency the full extent of all Federal, State,
24 and local subsidies which apply (or which

1 the taxpayer expects to apply) with respect
2 to the building.

3 “(1) REGULATIONS.—The Secretary shall prescribe
4 such regulations as may be necessary or appropriate to
5 carry out the purposes of this section, including
6 regulations—

7 “(1) dealing with—

8 “(A) investment projects which include
9 more than 1 building or only a portion of a
10 building,

11 “(B) buildings which are sold in portions,

12 “(2) providing for the application of this section
13 to short taxable years,

14 “(3) preventing the avoidance of the rules of
15 this section, and

16 “(4) providing the opportunity for rural invest-
17 ment credit agencies to correct administrative errors
18 and omissions with respect to allocations and record
19 keeping within a reasonable period after their dis-
20 covery, taking into account the availability of regula-
21 tions and other administrative guidance from the
22 Secretary.”.

23 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-
24 TION.—Section 38(b) (relating to current year business
25 credit), as amended by this Act, is amended by striking

1 “plus” at the end of paragraph (16), by striking the period
2 at the end of paragraph (17) and inserting “, plus”, and
3 by adding at the end the following:

4 “(18) the rural investment credit determined
5 under section 42A(a).”.

6 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
7 section 39 (relating to carryback and carryforward of un-
8 used credits), as amended by this Act, is amended by add-
9 ing at the end the following:

10 “(12) NO CARRYBACK OF RURAL INVESTMENT
11 CREDIT BEFORE EFFECTIVE DATE.—No portion of
12 the unused business credit for any taxable year
13 which is attributable to the rural investment credit
14 determined under section 42A may be carried back
15 to a taxable year beginning before the date of the
16 enactment of the Jumpstart Our Business Strength
17 (JOBS) Act.”.

18 (d) CONFORMING AMENDMENTS.—

19 (1) Section 55(c)(1) is amended by inserting
20 “or subsection (i) or (j) of section 42A” after “sec-
21 tion 42”.

22 (2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and
23 (k)(1) of section 469 are each amended by inserting
24 “or 42A” after “section 42”.

1 **“SEC. 42B. QUALIFIED RURAL SMALL BUSINESS INVEST-**
2 **MENT CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 38, in
4 the case of a qualified rural small business, the amount
5 of the qualified rural small business investment credit de-
6 termined under this section for any taxable year is equal
7 to 30 percent of the qualified expenditures for the taxable
8 year of such business.

9 “(b) DOLLAR LIMITATION.—

10 “(1) IN GENERAL.—The credit allowable under
11 subsection (a) for any taxable year shall not exceed
12 the lesser of—

13 “(A) \$5,000, or

14 “(B) the amount when added to the aggre-
15 gate credits allowable to the taxpayer under
16 subsection (a) for all preceding taxable years
17 does not exceed \$25,000.

18 “(2) NO DOUBLE CREDIT ALLOWED.—In the
19 case of any qualified rural small business which
20 places in service a qualified rural investment build-
21 ing with respect to which a rural investment credit
22 is allowed under section 42A for any taxable year,
23 paragraph (1)(A) shall be applied with respect to
24 such taxable year by substituting ‘zero’ for ‘\$5,000’.

1 “(c) QUALIFIED RURAL SMALL BUSINESS.—For
2 purposes of this section, the term ‘qualified rural small
3 business’ means any person if such person—

4 “(1) employed not more than 5 full-time em-
5 ployees during the taxable year,

6 “(2) materially and substantially participates in
7 management,

8 “(3) is located in a qualifying county, and

9 “(4) submitted a qualified business plan with
10 respect to which the rural investment credit agency
11 with jurisdiction over such qualifying county has al-
12 located a portion of the State rural investment ceil-
13 ing for such taxable year under section 42A(g)(7).

14 For purposes of paragraph (1), an employee shall be con-
15 sidered full-time if such employee is employed at least 30
16 hours per week for 20 or more calendar weeks in the tax-
17 able year.

18 “(d) QUALIFIED EXPENDITURES.—For purposes of
19 this section—

20 “(1) IN GENERAL.—The term ‘qualified expend-
21 itures’ means expenditures normally associated with
22 starting or expanding a business and included in a
23 qualified business plan, including costs for capital,
24 plant and equipment, inventory expenses, and wages,
25 but not including interest costs.

1 “(2) ONLY CERTAIN EXPENDITURES INCLUDED
2 FOR EXISTING BUSINESSES.—In the case of a quali-
3 fied rural small business with respect to which a
4 credit under subsection (a) was allowed for a pre-
5 ceding taxable year, such term shall include only so
6 much of the expenditures described in paragraph (1)
7 for the taxable year as exceed the aggregate of such
8 expenditures for the preceding taxable year.

9 “(e) QUALIFIED BUSINESS PLAN.—For purposes of
10 this section, the term ‘qualified business plan’ means a
11 business plan which—

12 “(1) has been approved by the rural investment
13 credit agency with jurisdiction over the qualifying
14 county in which the qualified rural small business is
15 located pursuant to such agency’s rural investment
16 plan, and

17 “(2) meets such requirements as the agency
18 may specify.

19 “(f) DENIAL OF DOUBLE BENEFIT.—In the case of
20 the amount of the credit determined under this section—

21 “(1) no deduction or credit shall be allowed for
22 such amount under any other provision of this chap-
23 ter, and

24 “(2) no increase in the adjusted basis of any
25 property shall result from such amount.

1 “(g) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) any term which is used in this section
4 which is used in section 42A shall have the meaning
5 given such term by section 42A, and

6 “(2) rules similar to the rules under subsections
7 (j)(2), (j)(3), and (k) of section 42A shall apply.”.

8 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-
9 TION.—Section 38(b) (relating to current year business
10 credit), as amended by this Act, is amended by striking
11 “plus” at the end of paragraph (17), by striking the period
12 at the end of paragraph (18) and inserting “, plus”, and
13 by adding at the end the following:

14 “(19) the qualified rural small business invest-
15 ment credit determined under section 42B(a).”.

16 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
17 section 39 (relating to carryback and carryforward of un-
18 used credits), as amended by this Act, is amended by add-
19 ing at the end the following:

20 “(13) NO CARRYBACK OF QUALIFIED RURAL
21 SMALL BUSINESS INVESTMENT CREDIT BEFORE EF-
22 FECTIVE DATE.—No portion of the unused business
23 credit for any taxable year which is attributable to
24 the qualified rural small business investment credit
25 determined under section 42B may be carried back

1 to a taxable year beginning before the date of the
2 enactment of the Jumpstart Our Business Strength
3 (JOBS) Act.”.

4 (d) CLERICAL AMENDMENT.—The table of sections
5 for subpart D of part IV of subchapter A of chapter 1,
6 as amended by this Act, is amended by inserting after the
7 item relating to section 42A the following:

“Sec. 42B. Qualified rural small business investment credit.”.

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to expenditures made in taxable
10 years beginning after the date of the enactment of this
11 Act.

12 **SEC. 635. CREDIT FOR MAINTENANCE OF RAILROAD**
13 **TRACK.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-
15 chapter A of chapter 1 (relating to business-related cred-
16 its), as amended by this Act, is amended by adding at
17 the end the following new section:

18 **“SEC. 45I. RAILROAD TRACK MAINTENANCE CREDIT.**

19 “(a) GENERAL RULE.—For purposes of section 38,
20 the railroad track maintenance credit determined under
21 this section for the taxable year is an amount equal to
22 15 percent of the qualified railroad track maintenance ex-
23 penditures paid or incurred by an eligible taxpayer during
24 the taxable year.

1 “(b) LIMITATION.—The credit allowed under sub-
2 section (a) for any taxable year shall not exceed the prod-
3 uct of—

4 “(1) \$10,000, and

5 “(2) the number of miles of railroad track
6 owned or leased by the eligible taxpayer as of the
7 close of the taxable year.

8 “(c) ELIGIBLE TAXPAYER.—For purposes of this sec-
9 tion, the term ‘eligible taxpayer’ means—

10 “(1) any Class II or Class III railroad, and

11 “(2) any person who transports property using
12 the rail facilities of a person described in paragraph
13 (1) or who furnishes railroad-related property or
14 services to such a person.

15 “(d) QUALIFIED RAILROAD TRACK MAINTENANCE
16 EXPENDITURES.—For purposes of this section, the term
17 ‘qualified railroad track maintenance expenditures’ means
18 expenditures (whether or not otherwise chargeable to cap-
19 ital account) for maintaining railroad track (including
20 roadbed, bridges, and related track structures) owned or
21 leased as of January 1, 2005, by a Class II or Class III
22 railroad.

23 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

24 “(1) CLASS II OR CLASS III RAILROAD.—For
25 purposes of this section, the terms ‘Class II railroad’

1 and ‘Class III railroad’ have the meanings given
2 such terms by the Surface Transportation Board.

3 “(2) CONTROLLED GROUPS.—Rules similar to
4 the rules of paragraph (1) of section 41(f) shall
5 apply for purposes of this section.

6 “(3) BASIS ADJUSTMENT.—For purposes of
7 this subtitle, if a credit is allowed under this section
8 with respect to any railroad track, the basis of such
9 track shall be reduced by the amount of the credit
10 so allowed.

11 “(f) APPLICATION OF SECTION.—This section shall
12 apply to qualified railroad track maintenance expenditures
13 paid or incurred during taxable years beginning after De-
14 cember 31, 2004, and before January 1, 2008.”.

15 (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-
16 lating to transition rules), as amended by this Act, is
17 amended by adding at the end the following new para-
18 graph:

19 “(14) NO CARRYBACK OF RAILROAD TRACK
20 MAINTENANCE CREDIT BEFORE EFFECTIVE DATE.—
21 No portion of the unused business credit for any
22 taxable year which is attributable to the railroad
23 track maintenance credit determined under section
24 45I may be carried to a taxable year beginning be-
25 fore January 1, 2005.”.

1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 38(b) (relating to general business
3 credit), as amended by this Act, is amended by
4 striking “plus” at the end of paragraph (18), by
5 striking the period at the end of paragraph (19) and
6 inserting “, plus”, and by adding at the end the fol-
7 lowing new paragraph:

8 “(20) the railroad track maintenance credit de-
9 termined under section 45I(a).”.

10 (2) Subsection (a) of section 1016, as amended
11 by this Act, is amended by striking “and” at the end
12 of paragraph (28), by striking the period at the end
13 of paragraph (29) and inserting “, and”, and by
14 adding at the end the following new paragraph:

15 “(30) in the case of railroad track with respect
16 to which a credit was allowed under section 45I, to
17 the extent provided in section 45I(e)(3).”.

18 (d) CLERICAL AMENDMENT.—The table of sections
19 for subpart D of part IV of subchapter A of chapter 1,
20 as amended by this Act, is amended by inserting after the
21 item relating to section 45F the following new item:

“Sec. 45I. Railroad track maintenance credit.”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2004.

1 **SEC. 636. RAILROAD REVITALIZATION AND SECURITY IN-**
2 **VESTMENT CREDIT.**

3 (a) RAILROAD REVITALIZATION AND SECURITY IN-
4 VESTMENT CREDIT.—

5 (1) IN GENERAL.—Subpart D of part IV of
6 subchapter A of chapter 1 (relating to business-re-
7 lated credits), as amended by this Act, is amended
8 by adding at the end the following new section:

9 **“SEC. 45J. RAILROAD REVITALIZATION AND SECURITY IN-**
10 **VESTMENT CREDIT.**

11 “(a) GENERAL RULE.—For purposes of section 38,
12 the railroad revitalization and security investment credit
13 determined under this section for the taxable year is the
14 amount equal to 50 percent of the qualified project ex-
15 penditures paid or incurred by the taxpayer during the
16 taxable year.

17 “(b) QUALIFIED PROJECT EXPENDITURES.—

18 “(1) IN GENERAL.—For purposes of this sec-
19 tion, the term ‘qualified project expenditures’ means,
20 with respect to any project for intercity passenger
21 rail transportation (as defined under section 24102
22 of title 49, United States Code) which is included in
23 a State rail plan, expenditures (whether or not oth-
24 erwise chargeable to capital account) for—

25 “(A) planning,

1 “(B) environmental review and environ-
2 mental impact mitigation,

3 “(C) track and track structure rehabilita-
4 tion, relocation, improvement, and development,

5 “(D) railroad safety and security improve-
6 ments,

7 “(E) communications and signaling im-
8 provements,

9 “(F) intercity passenger rail equipment ac-
10 quisition, and

11 “(G) rail station and intermodal facilities
12 development.

13 “(2) EXCEPTIONS.—An expenditure shall not
14 be treated as a qualified project expenditure unless
15 all persons which conduct rail operations over the in-
16 frastructure with respect to which such an expendi-
17 ture is made—

18 “(A) are employers for purposes of the
19 Railroad Retirement Act of 1974 and are car-
20 riers for purposes of the Railway Labor Act
21 (unless such a person is an operator with re-
22 spect to commuter rail passenger transportation
23 (as defined in section 24102(4) of title 49,
24 United States Code) of a State or local govern-
25 ment authority (as such terms are defined in

1 section 5302 of such title) eligible to receive fi-
2 nancial assistance under section 5307 of such
3 title, a contractor performing services in con-
4 nection with the operations with respect to com-
5 muter rail passenger transportation (as so de-
6 fined), or the Alaska Railroad or its contrac-
7 tors),

8 “(B) provide assurances to the State that
9 any collective bargaining agreements with such
10 a person’s employees (including terms regu-
11 lating the contracting of work) will remain in
12 full force and effect according to the terms of
13 the agreements for work performed for such a
14 person on the railroad transportation corridor,
15 and

16 “(C) comply with the protective agree-
17 ments established under section 504 of the
18 Railroad Revitalization and Regulatory Reform
19 Act of 1976 with respect to employees affected
20 by actions taken in connection with the project.

21 “(c) LIMITATION.—

22 “(1) IN GENERAL.—The amount of the credit
23 allowed under subsection (a) for any taxable year
24 with respect to any project for which qualified
25 project expenditures are made shall not exceed the

1 limitation allocated to such project under this sub-
2 section for the calendar year in which the taxable
3 year begins.

4 “(2) STATE LIMITATION.—

5 “(A) IN GENERAL.—There is a State rail-
6 road revitalization and security investment
7 credit limitation for each calendar year. Such
8 limitation is the amount which bears the same
9 ratio to \$165,000,000 as the allocation number
10 for such State bears to the allocation number
11 for all States.

12 “(B) ALLOCATION NUMBER.—For pur-
13 poses of subparagraph (A), the allocation num-
14 ber is, with respect to any State, the sum of the
15 following:

16 “(i) The number of railroad and pub-
17 lic road grade crossings on intercity pas-
18 senger rail routes within the State.

19 “(ii) The number of intercity pas-
20 senger rail miles within the State.

21 “(iii) The number of intercity embar-
22 kations and disembarkations for each pas-
23 senger within the State.

24 “(3) UNUSED CREDIT CARRYOVERS ALLOCATED
25 AMONG CERTAIN STATES.—

1 “(A) IN GENERAL.—The unused credit
2 carryover for all States for any calendar year
3 shall be reallocated to each qualified State in an
4 amount which bears the same ratio to the un-
5 used credit carryover for all States for the cal-
6 endar as the allocation number for such quali-
7 fied State bears to the allocation number for all
8 qualified States.

9 “(B) UNUSED CREDIT CARRYOVER.—For
10 purposes of this paragraph, the term ‘unused
11 credit carryover’ means, with respect to any
12 State, the excess of the State limitation (deter-
13 mined under paragraph (2)) for the calendar
14 year over the amount allocated by the State
15 under paragraph (4) for such calendar year.

16 “(C) QUALIFIED STATES.—For purposes
17 of this paragraph, the term ‘qualified State’
18 means any State—

19 “(i) which allocated its entire State
20 limitation amount under paragraph (4) for
21 the calendar year, and

22 “(ii) for which a request is made to
23 receive an allocation under this paragraph.

24 “(4) ALLOCATION WITHIN STATES.—Each
25 State shall allocate the limitation amount allocated

1 to such State under paragraphs (2) and (3) to
2 projects for intercity passenger rail transportation
3 which are included in the State rail plan of such
4 State.

5 “(5) NEW YORK CITY RAIL PROJECTS.—In ad-
6 dition to the amounts allocated under paragraph (2),
7 the Secretary shall allocate a limitation of
8 \$100,000,000 for each calendar year to New York
9 City for qualified project expenditures within such
10 city.

11 “(d) STATE RAIL PLAN.—For purposes of this sec-
12 tion, the term ‘State rail plan’ means a plan prepared and
13 maintained in accordance with chapter 225 of title 49,
14 United States Code.

15 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
16 title, if a credit is allowed under this section with respect
17 to any property, the basis of such property shall be re-
18 duced by the amount of the credit so allowed.

19 “(f) NO DOUBLE BENEFIT.—No credit shall be al-
20 lowed under this section with respect to any expenditures
21 for which a credit is allowed under section 45I.

22 “(g) CREDIT TRANSFERABILITY.—Any credit allow-
23 able under this section may be transferred (but not more
24 than once) if—

1 “(1) the credit exceeds the tax liability of the
2 taxpayer for the taxable year, or

3 “(2) the taxpayer is not subject to any tax im-
4 posed by this chapter by reason of having a tax-ex-
5 empt status.

6 “(h) APPLICATION OF SECTION.—This section shall
7 apply to qualified project expenditures paid or incurred
8 during taxable years beginning after December 31, 2004,
9 and before January 1, 2008.”.

10 (2) LIMITATION ON CARRYBACK.—Section
11 39(d) (relating to transition rules), as amended by
12 this Act, is amended by adding at the end the fol-
13 lowing new paragraph:

14 “(15) NO CARRYBACK OF SECTION 45J CREDIT
15 BEFORE EFFECTIVE DATE.—No portion of the un-
16 used business credit for any taxable year which is
17 attributable to the credit determined under section
18 45J(a) may be carried back to any taxable year be-
19 ginning before January 1, 2005.”.

20 (3) CONFORMING AMENDMENTS.—

21 (A) Section 38(b) (relating to general busi-
22 ness credit), as amended by this Act, is amend-
23 ed by striking “plus” at the end of paragraph
24 (19), by striking the period at the end of para-

1 graph (20) and inserting “, plus”, and by add-
2 ing at the end the following new paragraph:

3 “(21) the railroad revitalization and security in-
4 vestment credit determined under section 45J(a).”.

5 (B) Subsection (a) of section 1016, as
6 amended by this Act, is amended by striking
7 “and” at the end of paragraph (29), by striking
8 the period at the end of paragraph (30) and in-
9 serting “, and”, and by adding at the end the
10 following new paragraph:

11 “(31) in the case of property with respect to
12 which a credit was allowed under section 45J, to the
13 extent provided in section 45J(e).”.

14 (4) CLERICAL AMENDMENT.—The table of sec-
15 tions for subpart D of part IV of subchapter A of
16 chapter 1, as amended by this Act, is amended by
17 inserting after the item relating to section 45I the
18 following new item:

“Sec. 45J. Railroad revitalization and security invest-
ment credit.”.

19 (5) EFFECTIVE DATE.—The amendments made
20 by this section shall apply to taxable years beginning
21 after December 31, 2004.

22 (b) STATE RAIL PLANS.—

1 (1) IN GENERAL.—Part B of subtitle V of title
2 49, United States Code, is amended by adding at
3 the end the following:

4 **“CHAPTER 225—STATE RAIL PLANS**

“Sec.

“22501. Authority.

“22502. Purposes.

“22503. Transparency; coordination.

“22504. Content.

“22505. Approval.

“22506. Definitions.

5 **“§ 22501. Authority**

6 “(a) IN GENERAL.—Each State may prepare and
7 maintain a State rail plan in accordance with the provi-
8 sions of this chapter.

9 “(b) REQUIREMENTS.—For the preparation and peri-
10 odic revision of a State rail plan, a State shall—

11 “(1) establish or designate a State rail trans-
12 portation authority to prepare, maintain, coordinate,
13 and administer the plan;

14 “(2) establish or designate a State rail plan ap-
15 proval authority to approve the plan;

16 “(3) make the State’s approved plan available
17 to the public and transmit a copy to the Secretary
18 of Transportation; and

19 “(4) revise the plan no less frequently than
20 once every 5 years.

1 **“§ 22502. Purposes**

2 “(a) PURPOSES.—The purposes of a State rail plan
3 are as follows:

4 “(1) To set forth State policy involving freight
5 and passenger rail transportation, including com-
6 muter rail operations, in the State.

7 “(2) To present priorities and strategies to en-
8 hance rail service in the State that benefits the pub-
9 lic.

10 “(3) To serve as the basis for Federal and
11 State rail investments within the State.

12 “(b) CONTENT.—The State rail plan shall establish
13 the period covered by such plan.

14 “(c) CONSISTENCY WITH STATE TRANSPORTATION
15 EFFORTS.—A State rail plan shall be consistent with the
16 State transportation planning goals and programs and
17 shall set forth rail transportation’s role within the State
18 transportation system.

19 **“§ 22503. Transparency; coordination**

20 “(a) PREPARATION.—A State shall provide adequate
21 and reasonable notice and opportunity for comment and
22 other input on a proposed State rail plan under this chap-
23 ter to the following:

24 “(1) The public.

25 “(2) Rail carriers.

1 “(3) Commuter and transit authorities oper-
2 ating in, or affected by rail operations within, the
3 State.

4 “(4) Units of local government.

5 “(5) Other parties interested in the preparation
6 and review of the State rail plan.

7 “(b) INTERGOVERNMENTAL COORDINATION.—A
8 State shall review the freight and passenger rail service
9 activities and initiatives of regional planning agencies, re-
10 gional transportation authorities, and municipalities with-
11 in the State, or in the region in which the State is located,
12 while preparing the plan, and shall include any rec-
13 ommendations made by such agencies, authorities, and
14 municipalities as deemed appropriate by the State.

15 **“§ 22504. Content**

16 “(a) IN GENERAL.—Each State rail plan shall con-
17 tain the following:

18 “(1) An inventory of the existing overall rail
19 transportation system and rail services and facilities
20 within the State and an analysis of the role of rail
21 transportation within the State’s surface transpor-
22 tation system.

23 “(2) A comprehensive review of all rail lines
24 within the State, including proposed high speed rail

1 corridors and significant rail line segments not cur-
2 rently in service.

3 “(3) A statement of the State’s passenger rail
4 service objectives, including minimum service levels,
5 for intercity passenger rail transportation routes in
6 the State.

7 “(4) A general analysis of rail’s transportation,
8 economic, and environmental impacts in the State,
9 including congestion mitigation, trade and economic
10 development, air quality, land-use, energy-use, and
11 community impacts.

12 “(5) A long-range rail investment program for
13 current and future freight and passenger infrastruc-
14 ture in the State that meets the requirements of
15 subsection (b).

16 “(6) A statement of public financing issues for
17 rail projects and service in the State, including a list
18 of current and prospective public capital and oper-
19 ating funding resources, public subsidies, State tax-
20 ation, and other financial policies relating to rail in-
21 frastructure development.

22 “(7) An identification of rail infrastructure
23 issues within the State that reflects consultation
24 with all relevant stake holders.

1 “(8) A review of major passenger and freight
2 intermodal rail connections and facilities within the
3 State, including seaports, and prioritized options to
4 maximize service integration and efficiency between
5 rail and other modes of transportation within the
6 State.

7 “(9) A review of publicly funded projects within
8 the State to improve rail transportation safety and
9 security, including all major projects funded under
10 section 130 of title 23.

11 “(10) A performance evaluation of passenger
12 rail services operating in the State, including pos-
13 sible improvements in those services, and a descrip-
14 tion of strategies to achieve those improvements.

15 “(11) A compilation of studies and reports on
16 high-speed rail corridor development within the
17 State not included in a previous plan under this
18 chapter, and a plan for funding any recommended
19 development of such corridors in the State.

20 “(12) A statement that the State satisfies the
21 conditions set forth in section 22102.

22 “(b) LONG-RANGE SERVICE AND INVESTMENT PRO-
23 GRAM.—

24 “(1) PROGRAM CONTENT.—A long-range rail
25 investment program included in a State rail plan

1 under subsection (a)(5) shall include the following
2 matters:

3 “(A) Two lists for rail capital projects, 1
4 list for freight rail capital projects and 1 list for
5 intercity passenger rail capital projects.

6 “(B) A detailed funding plan for the
7 projects.

8 “(2) PROJECT LIST CONTENT.—The lists of
9 freight and intercity passenger rail capital projects
10 shall contain—

11 “(A) a description of the anticipated public
12 and private benefits of each such project; and

13 “(B) a statement of the correlation
14 between—

15 “(i) public funding contributions for
16 the projects; and

17 “(ii) the public benefits.

18 “(3) CONSIDERATIONS FOR PROJECT LIST.—In
19 preparing the list of freight and intercity passenger
20 rail capital projects, a State rail transportation au-
21 thority shall take into consideration the following
22 matters:

23 “(A) Contributions made by non-Federal
24 and non-State sources through user fees,

1 matching funds, or other private capital involve-
2 ment.

3 “(B) Rail capacity and congestion effects.

4 “(C) Effects to highway, aviation, and
5 maritime capacity, congestion, or safety.

6 “(D) Regional balance.

7 “(E) Environmental impact.

8 “(F) Economic and employment impacts.

9 “(G) Projected ridership and other service
10 measures for passenger rail projects.

11 **“§ 22505. Approval**

12 “The State rail plan approval authority established
13 or designated under section 22501(b)(2) may approve a
14 State rail plan for the purposes of this chapter if—

15 “(1) the plan meets all of the requirements ap-
16 plicable to State plans under this chapter;

17 “(2) for each ready-to-commence project listed
18 on the ranked list of freight and intercity passenger
19 rail capital improvement projects under the plan—

20 “(A) the project meets all safety and envi-
21 ronmental requirements, including those pre-
22 scribed under the National Environmental Pol-
23 icy Act of 1969 (42 U.S.C. 4331 et seq.) that
24 are applicable to the project under law; and

1 “(B) the State has entered into an agree-
2 ment with any owner of rail infrastructure or
3 right-of-way directly affected by the project that
4 provides for the State to proceed with the
5 project and includes assurances regarding ca-
6 pacity and compensation for use of such infra-
7 structure or right-of-way, if applicable; and

8 “(3) the content of the plan is coordinated with
9 State transportation plans developed pursuant to
10 section 135 of title 23.

11 **“§ 22506. Definitions**

12 “In this chapter:

13 “(1) PRIVATE BENEFIT.—The term ‘private
14 benefit’—

15 “(A) means a benefit accrued to a person
16 or private entity, other than the National Rail-
17 road Passenger Corporation, that directly im-
18 proves the economic and competitive condition
19 of that person or entity through improved as-
20 sets, cost reductions, service improvements, or
21 other means; and

22 “(B) shall be determined on a project-by-
23 project basis, based upon an agreement between
24 the State and the affected persons or private
25 entities.

1 “(2) PUBLIC BENEFIT.—The term ‘public
2 benefit’—

3 “(A) means a benefit accrued to the public
4 in the form of enhanced mobility of people or
5 goods, environmental protection or enhance-
6 ment, congestion mitigation, enhanced trade
7 and economic development, improved air quality
8 or land use, more efficient energy use, enhanced
9 public safety or security, reduction of public ex-
10 penditures due to improved transportation effi-
11 ciency or infrastructure preservation, and other
12 positive community effects; and

13 “(B) shall be determined on a project-by-
14 project basis, based upon an agreement between
15 the State and the persons or private entities in-
16 volved in the project.

17 “(3) STATE.—The term ‘State’ means any of
18 the 50 States and the District of Columbia.

19 “(4) STATE RAIL TRANSPORTATION AUTHOR-
20 ITY.—The term ‘State rail transportation authority’
21 means the State agency or official responsible under
22 the direction of the Chief Executive of the State or
23 a State law for preparation, maintenance, coordina-
24 tion, and administration of the State rail plan under
25 this chapter.”.

1 (2) CLERICAL AMENDMENT.—The table of
 2 chapters at the beginning of subtitle V of title 49,
 3 United States Code, is amended by inserting after
 4 the item relating to chapter 223 the following:

“225. STATE RAIL PLANS22501.”

5 **Subtitle E—Miscellaneous**
 6 **Provisions**

7 **SEC. 641. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
 8 **CHANGE OF CERTAIN BROWNFIELD SITES**
 9 **FROM UNRELATED BUSINESS TAXABLE IN-**
 10 **COME.**

11 (a) IN GENERAL.—Subsection (b) of section 512 (re-
 12 lating to unrelated business taxable income) is amended
 13 by adding at the end the following new paragraph:

14 “(18) TREATMENT OF GAIN OR LOSS ON SALE
 15 OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

16 “(A) IN GENERAL.—Notwithstanding para-
 17 graph (5)(B), there shall be excluded any gain
 18 or loss from the qualified sale, exchange, or
 19 other disposition of any qualifying brownfield
 20 property by an eligible taxpayer.

21 “(B) ELIGIBLE TAXPAYER.—For purposes
 22 of this paragraph—

23 “(i) IN GENERAL.—The term ‘eligible
 24 taxpayer’ means, with respect to a prop-

1 erty, any organization exempt from tax
2 under section 501(a) which—

3 “(I) acquires from an unrelated
4 person a qualifying brownfield prop-
5 erty, and

6 “(II) pays or incurs eligible re-
7 mediation expenditures with respect to
8 such property in an amount which ex-
9 ceeds the greater of \$550,000 or 12
10 percent of the fair market value of the
11 property at the time such property
12 was acquired by the eligible taxpayer,
13 determined as if there was not a pres-
14 ence of a hazardous substance, pollut-
15 ant, or contaminant on the property
16 which is complicating the expansion,
17 redevelopment, or reuse of the prop-
18 erty.

19 “(ii) EXCEPTION.—Such term shall
20 not include any organization which is—

21 “(I) potentially liable under sec-
22 tion 107 of the Comprehensive Envi-
23 ronmental Response, Compensation,
24 and Liability Act of 1980 with respect
25 to the qualifying brownfield property,

1 “(II) affiliated with any other
2 person which is so potentially liable
3 through any direct or indirect familial
4 relationship or any contractual, cor-
5 porate, or financial relationship (other
6 than a contractual, corporate, or fi-
7 nancial relationship which is created
8 by the instruments by which title to
9 any qualifying brownfield property is
10 conveyed or financed or by a contract
11 of sale of goods or services), or

12 “(III) the result of a reorganiza-
13 tion of a business entity which was so
14 potentially liable.

15 “(C) QUALIFYING BROWNFIELD PROP-
16 ERTY.—For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘quali-
18 fying brownfield property’ means any real
19 property which is certified, before the tax-
20 payer incurs any eligible remediation ex-
21 penditures (other than to obtain a Phase I
22 environmental site assessment), by an ap-
23 propriate State agency (within the mean-
24 ing of section 198(c)(4)) in the State in
25 which such property is located as a

1 brownfield site within the meaning of sec-
2 tion 101(39) of the Comprehensive Envi-
3 ronmental Response, Compensation, and
4 Liability Act of 1980 (as in effect on the
5 date of the enactment of this paragraph).

6 “(ii) REQUEST FOR CERTIFICATION.—
7 Any request by an eligible taxpayer for a
8 certification described in clause (i) shall in-
9 clude a sworn statement by the eligible
10 taxpayer and supporting documentation of
11 the presence of a hazardous substance, pol-
12 lutant, or contaminant on the property
13 which is complicating the expansion, rede-
14 velopment, or reuse of the property given
15 the property’s reasonably anticipated fu-
16 ture land uses or capacity for uses of the
17 property (including a Phase I environ-
18 mental site assessment and, if applicable,
19 evidence of the property’s presence on a
20 local, State, or Federal list of brownfields
21 or contaminated property) and other envi-
22 ronmental assessments prepared or ob-
23 tained by the taxpayer.

1 “(D) QUALIFIED SALE, EXCHANGE, OR
2 OTHER DISPOSITION.—For purposes of this
3 paragraph—

4 “(i) IN GENERAL.—A sale, exchange,
5 or other disposition of property shall be
6 considered as qualified if—

7 “(I) such property is transferred
8 by the eligible taxpayer to an unre-
9 lated person, and

10 “(II) within 1 year of such trans-
11 fer the eligible taxpayer has received a
12 certification from the Environmental
13 Protection Agency or an appropriate
14 State agency (within the meaning of
15 section 198(c)(4)) in the State in
16 which such property is located that, as
17 a result of the eligible taxpayer’s re-
18 mediation actions, such property
19 would not be treated as a qualifying
20 brownfield property in the hands of
21 the transferee.

22 For purposes of subclause (II), before
23 issuing such certification, the Environ-
24 mental Protection Agency or appropriate
25 State agency shall respond to comments

1 received pursuant to clause (ii)(V) in the
2 same form and manner as required under
3 section 117(b) of the Comprehensive Envi-
4 ronmental Response, Compensation, and
5 Liability Act of 1980 (as in effect on the
6 date of the enactment of this paragraph).

7 “(ii) REQUEST FOR CERTIFICATION.—
8 Any request by an eligible taxpayer for a
9 certification described in clause (i) shall be
10 made not later than the date of the trans-
11 fer and shall include a sworn statement by
12 the eligible taxpayer certifying the fol-
13 lowing:

14 “(I) Remedial actions which com-
15 ply with all applicable or relevant and
16 appropriate requirements (consistent
17 with section 121(d) of the Com-
18 prehensive Environmental Response,
19 Compensation, and Liability Act of
20 1980) have been substantially com-
21 pleted, such that there are no haz-
22 ardous substances, pollutants, or con-
23 taminants which complicate the ex-
24 pansion, redevelopment, or reuse of
25 the property given the property’s rea-

1 sonably anticipated future land uses
2 or capacity for uses of the property.

3 “(II) The reasonably anticipated
4 future land uses or capacity for uses
5 of the property are more economically
6 productive or environmentally bene-
7 ficial than the uses of the property in
8 existence on the date of the certifi-
9 cation described in subparagraph
10 (C)(i). For purposes of the preceding
11 sentence, use of property as a landfill
12 or other hazardous waste facility shall
13 not be considered more economically
14 productive or environmentally bene-
15 ficial.

16 “(III) A remediation plan has
17 been implemented to bring the prop-
18 erty into compliance with all applica-
19 ble local, State, and Federal environ-
20 mental laws, regulations, and stand-
21 ards and to ensure that the remedi-
22 ation protects human health and the
23 environment.

24 “(IV) The remediation plan de-
25 scribed in subclause (III), including

1 any physical improvements required to
2 remediate the property, is either com-
3 plete or substantially complete, and, if
4 substantially complete, sufficient mon-
5 itoring, funding, institutional controls,
6 and financial assurances have been
7 put in place to ensure the complete
8 remediation of the property in accord-
9 ance with the remediation plan as
10 soon as is reasonably practicable after
11 the sale, exchange, or other disposi-
12 tion of such property.

13 “(V) Public notice and the oppor-
14 tunity for comment on the request for
15 certification was completed before the
16 date of such request. Such notice and
17 opportunity for comment shall be in
18 the same form and manner as re-
19 quired for public participation re-
20 quired under section 117(a) of the
21 Comprehensive Environmental Re-
22 sponse, Compensation, and Liability
23 Act of 1980 (as in effect on the date
24 of the enactment of this paragraph).
25 For purposes of this subclause, public

1 notice shall include, at a minimum,
2 publication in a major local newspaper
3 of general circulation.

4 “(iii) ATTACHMENT TO TAX RE-
5 TURNS.—A copy of each of the requests
6 for certification described in clause (ii) of
7 subparagraph (C) and this subparagraph
8 shall be included in the tax return of the
9 eligible taxpayer (and, where applicable, of
10 the qualifying partnership) for the taxable
11 year during which the transfer occurs.

12 “(iv) SUBSTANTIAL COMPLETION.—
13 For purposes of this subparagraph, a re-
14 medial action is substantially complete
15 when any necessary physical construction
16 is complete, all immediate threats have
17 been eliminated, and all long-term threats
18 are under control.

19 “(E) ELIGIBLE REMEDIATION EXPENDI-
20 TURES.—For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘eligible
22 remediation expenditures’ means, with re-
23 spect to any qualifying brownfield prop-
24 erty, any amount paid or incurred by the
25 eligible taxpayer to an unrelated third per-

1 son to obtain a Phase I environmental site
2 assessment of the property, and any
3 amount so paid or incurred after the date
4 of the certification described in subpara-
5 graph (C)(i) for goods and services nec-
6 essary to obtain a certification described in
7 subparagraph (D)(i) with respect to such
8 property, including expenditures—

9 “(I) to manage, remove, control,
10 contain, abate, or otherwise remediate
11 a hazardous substance, pollutant, or
12 contaminant on the property,

13 “(II) to obtain a Phase II envi-
14 ronmental site assessment of the
15 property, including any expenditure to
16 monitor, sample, study, assess, or oth-
17 erwise evaluate the release, threat of
18 release, or presence of a hazardous
19 substance, pollutant, or contaminant
20 on the property,

21 “(III) to obtain environmental
22 regulatory certifications and approvals
23 required to manage the remediation
24 and monitoring of the hazardous sub-

1 stance, pollutant, or contaminant on
2 the property, and

3 “(IV) regardless of whether it is
4 necessary to obtain a certification de-
5 scribed in subparagraph (D)(i)(II), to
6 obtain remediation cost-cap or stop-
7 loss coverage, re-opener or regulatory
8 action coverage, or similar coverage
9 under environmental insurance poli-
10 cies, or financial guarantees required
11 to manage such remediation and mon-
12 itoring.

13 “(ii) EXCEPTIONS.—Such term shall
14 not include—

15 “(I) any portion of the purchase
16 price paid or incurred by the eligible
17 taxpayer to acquire the qualifying
18 brownfield property,

19 “(II) environmental insurance
20 costs paid or incurred to obtain legal
21 defense coverage, owner/operator li-
22 ability coverage, lender liability cov-
23 erage, professional liability coverage,
24 or similar types of coverage,

1 “(III) any amount paid or in-
2 curred to the extent such amount is
3 reimbursed, funded, or otherwise sub-
4 sidized by grants provided by the
5 United States, a State, or a political
6 subdivision of a State for use in con-
7 nection with the property, proceeds of
8 an issue of State or local government
9 obligations used to provide financing
10 for the property the interest of which
11 is exempt from tax under section 103,
12 or subsidized financing provided (di-
13 rectly or indirectly) under a Federal,
14 State, or local program provided in
15 connection with the property, or

16 “(IV) any expenditure paid or in-
17 curred before the date of the enact-
18 ment of this paragraph.

19 For purposes of subclause (III), the Sec-
20 retary may issue guidance regarding the
21 treatment of government-provided funds
22 for purposes of determining eligible reme-
23 diation expenditures.

24 “(F) DETERMINATION OF GAIN OR
25 LOSS.—For purposes of this paragraph, the de-

1 termination of gain or loss shall not include an
2 amount treated as gain which is ordinary in-
3 come with respect to section 1245 or section
4 1250 property, including amounts deducted as
5 section 198 expenses which are subject to the
6 recapture rules of section 198(e), if the tax-
7 payer had deducted such amounts in the com-
8 putation of its unrelated business taxable in-
9 come.

10 “(G) SPECIAL RULES FOR PARTNER-
11 SHIPS.—

12 “(i) IN GENERAL.—In the case of an
13 eligible taxpayer which is a partner of a
14 qualifying partnership which acquires, re-
15 mediates, and sells, exchanges, or other-
16 wise disposes of a qualifying brownfield
17 property, this paragraph shall apply to the
18 eligible taxpayer’s distributive share of the
19 qualifying partnership’s gain or loss from
20 the sale, exchange, or other disposition of
21 such property.

22 “(ii) QUALIFYING PARTNERSHIP.—
23 The term ‘qualifying partnership’ means a
24 partnership which—

1 “(I) has a partnership agreement
2 which satisfies the requirements of
3 section 514(c)(9)(B)(vi) at all times
4 beginning on the date of the first cer-
5 tification received by the partnership
6 under subparagraph (C)(i),

7 “(II) satisfies the requirements
8 of subparagraphs (B)(i), (C), (D), and
9 (E), if ‘qualified partnership’ is sub-
10 stituted for ‘eligible taxpayer’ each
11 place it appears therein (except sub-
12 paragraph (D)(iii)), and

13 “(III) is not an organization
14 which would be prevented from consti-
15 tuting an eligible taxpayer by reason
16 of subparagraph (B)(ii).

17 “(iii) REQUIREMENT THAT TAX-EX-
18 EMPT PARTNER BE A PARTNER SINCE
19 FIRST CERTIFICATION.—This paragraph
20 shall apply with respect to any eligible tax-
21 payer which is a partner of a partnership
22 which acquires, remediates, and sells, ex-
23 changes, or otherwise disposes of a quali-
24 fying brownfield property only if such eligi-
25 ble taxpayer was a partner of the quali-

1 fying partnership at all times beginning on
2 the date of the first certification received
3 by the partnership under subparagraph
4 (C)(i) and ending on the date of the sale,
5 exchange, or other disposition of the prop-
6 erty by the partnership.

7 “(iv) REGULATIONS.—The Secretary
8 shall prescribe such regulations as are nec-
9 essary to prevent abuse of the require-
10 ments of this subparagraph, including
11 abuse through—

12 “(I) the use of special allocations
13 of gains or losses, or

14 “(II) changes in ownership of
15 partnership interests held by eligible
16 taxpayers.

17 “(H) SPECIAL RULES FOR MULTIPLE
18 PROPERTIES.—

19 “(i) IN GENERAL.—An eligible tax-
20 payer or a qualifying partnership of which
21 the eligible taxpayer is a partner may
22 make a 1-time election to apply this para-
23 graph to more than 1 qualifying brownfield
24 property by averaging the eligible remedi-
25 ation expenditures for all such properties

1 acquired during the election period. If the
2 eligible taxpayer or qualifying partnership
3 makes such an election, the election shall
4 apply to all qualified sales, exchanges, or
5 other dispositions of qualifying brownfield
6 properties the acquisition and transfer of
7 which occur during the period for which
8 the election remains in effect.

9 “(ii) ELECTION.—An election under
10 clause (i) shall be made with the eligible
11 taxpayer’s or qualifying partnership’s time-
12 ly filed tax return (including extensions)
13 for the first taxable year for which the tax-
14 payer or qualifying partnership intends to
15 have the election apply. An election under
16 clause (i) is effective for the period—

17 “(I) beginning on the date which
18 is the first day of the taxable year of
19 the return in which the election is in-
20 cluded or a later day in such taxable
21 year selected by the eligible taxpayer
22 or qualifying partnership, and

23 “(II) ending on the date which is
24 the earliest of a date of revocation se-
25 lected by the eligible taxpayer or

1 qualifying partnership, the date which
2 is 8 years after the date described in
3 subclause (I), or, in the case of an
4 election by a qualifying partnership of
5 which the eligible taxpayer is a part-
6 ner, the date of the termination of the
7 qualifying partnership.

8 “(iii) REVOCATION.—An eligible tax-
9 payer or qualifying partnership may revoke
10 an election under clause (i)(II) by filing a
11 statement of revocation with a timely filed
12 tax return (including extensions). A rev-
13 ocation is effective as of the first day of
14 the taxable year of the return in which the
15 revocation is included or a later day in
16 such taxable year selected by the eligible
17 taxpayer or qualifying partnership. Once
18 an eligible taxpayer or qualifying partner-
19 ship revokes the election, the eligible tax-
20 payer or qualifying partnership is ineligible
21 to make another election under clause (i)
22 with respect to any qualifying brownfield
23 property subject to the revoked election.

24 “(I) RECAPTURE.—If an eligible taxpayer
25 excludes gain or loss from a sale, exchange, or

1 other disposition of property to which an elec-
2 tion under subparagraph (H) applies, and such
3 property fails to satisfy the requirements of this
4 paragraph, the unrelated business taxable in-
5 come of the eligible taxpayer for the taxable
6 year in which such failure occurs shall be deter-
7 mined by including any previously excluded gain
8 or loss from such sale, exchange, or other dis-
9 position allocable to such taxpayer, and interest
10 shall be determined at the overpayment rate es-
11 tablished under section 6621 on any resulting
12 tax for the period beginning with the due date
13 of the return for the taxable year during which
14 such sale, exchange, or other disposition oc-
15 curred, and ending on the date of payment of
16 the tax.

17 “(J) RELATED PERSONS.—For purposes of
18 this paragraph, a person shall be treated as re-
19 lated to another person if—

20 “(i) such person bears a relationship
21 to such other person described in section
22 267(b) (determined without regard to
23 paragraph (9) thereof), or section
24 707(b)(1), determined by substituting ‘25

1 percent’ for ‘50 percent’ each place it ap-
2 pears therein, and

3 “(ii) in the case such other person is
4 a nonprofit organization, if such person
5 controls directly or indirectly more than 25
6 percent of the governing body of such or-
7 ganization.”

8 (b) EXCLUSION FROM DEFINITION OF DEBT-FI-
9 NANCED PROPERTY.—Section 514(b)(1) (defining debt-fi-
10 nanced property) is amended by striking “or” at the end
11 of subparagraph (C), by striking the period at the end of
12 subparagraph (D) and inserting “; or”, and by inserting
13 after subparagraph (D) the following new subparagraph:

14 “(E) any property the gain or loss from
15 the sale, exchange, or other disposition of which
16 would be excluded by reason of the provisions
17 of section 512(b)(18) in computing the gross
18 income of any unrelated trade or business.”.

19 (c) SAVINGS CLAUSE.—Nothing in the amendments
20 made by this section shall affect any duty, liability, or
21 other requirement imposed under any other Federal or
22 State law. Notwithstanding section 128(b) of the Com-
23 prehensive Environmental Response, Compensation, and
24 Liability Act of 1980, a certification provided by the Envi-
25 ronmental Protection Agency or an appropriate State

1 agency (within the meaning of section 198(c)(4) of the In-
2 ternal Revenue Code of 1986) shall not affect the liability
3 of any person under section 107(a) of such Act.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to any gain or loss on the sale,
6 exchange, or other disposition of any property acquired by
7 the taxpayer after December 31, 2004.

8 **SEC. 642. MODIFICATION OF UNRELATED BUSINESS IN-**
9 **COME LIMITATION ON INVESTMENT IN CER-**
10 **TAIN DEBT-FINANCED PROPERTIES.**

11 (a) IN GENERAL.—Section 514(c)(6) (relating to ac-
12 quisition indebtedness) is amended—

13 (1) by striking “include an obligation” and in-
14 serting “include—

15 “(A) an obligation”,

16 (2) by striking the period at the end and insert-
17 ing “, or”, and

18 (3) by adding at the end the following:

19 “(B) indebtedness incurred by a small
20 business investment company licensed under the
21 Small Business Investment Act of 1958 which
22 is evidenced by a debenture—

23 “(i) issued by such company under
24 section 303(a) of such Act, and

1 “(ii) held or guaranteed by the Small
2 Business Administration.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to acquisitions made on or after
5 the date of the enactment of this Act.

6 **SEC. 643. CIVIL RIGHTS TAX RELIEF.**

7 (a) **DEDUCTION ALLOWED WHETHER OR NOT TAX-**
8 **PAYER ITEMIZES OTHER DEDUCTIONS.**—Subsection (a)
9 of section 62 (defining adjusted gross income) is amended
10 by inserting after paragraph (18) the following new item:

11 “(19) **COSTS INVOLVING DISCRIMINATION**
12 **SUITS, ETC.**—Any deduction allowable under this
13 chapter for attorney fees and court costs paid by, or
14 on behalf of, the taxpayer in connection with any ac-
15 tion involving a claim of unlawful discrimination (as
16 defined in subsection (e)) or a claim of a violation
17 of subchapter III of chapter 37 of title 31, United
18 States Code. The preceding sentence shall not apply
19 to any deduction in excess of the amount includible
20 in the taxpayer’s gross income for the taxable year
21 on account of a judgment or settlement (whether by
22 suit or agreement and whether as lump sum or peri-
23 odic payments) resulting from such claim.”.

1 (b) UNLAWFUL DISCRIMINATION DEFINED.—Section
2 62 is amended by adding at the end the following new
3 subsection:

4 “(e) UNLAWFUL DISCRIMINATION DEFINED.—For
5 purposes of subsection (a)(19), the term ‘unlawful dis-
6 crimination’ means an act that is unlawful under any of
7 the following:

8 “(1) Section 302 of the Civil Rights Act of
9 1991 (2 U.S.C. 1202).

10 “(2) Section 201, 202, 203, 204, 205, 206, or
11 207 of the Congressional Accountability Act of 1995
12 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or
13 1317).

14 “(3) The National Labor Relations Act (29
15 U.S.C. 151 et seq.).

16 “(4) The Fair Labor Standards Act of 1938
17 (29 U.S.C. 201 et seq.).

18 “(5) Section 4 or 15 of the Age Discrimination
19 in Employment Act of 1967 (29 U.S.C. 623 or
20 633a).

21 “(6) Section 501 or 504 of the Rehabilitation
22 Act of 1973 (29 U.S.C. 791 or 794).

23 “(7) Section 510 of the Employee Retirement
24 Income Security Act of 1974 (29 U.S.C. 1140).

1 “(8) Title IX of the Education Amendments of
2 1972 (29 U.S.C. 1681 et seq.).

3 “(9) The Employee Polygraph Protection Act of
4 1988 (29 U.S.C. 201 et seq.).

5 “(10) The Worker Adjustment and Retraining
6 Notification Act (29 U.S.C. 2102 et seq.).

7 “(11) Section 105 of the Family and Medical
8 Leave Act of 1993 (29 U.S.C. 2615).

9 “(12) Chapter 43 of title 38, United States
10 Code (relating to employment and reemployment
11 rights of members of the uniformed services).

12 “(13) Section 1977, 1979, or 1980 of the Re-
13 vised Statutes (42 U.S.C. 1981, 1983, or 1985).

14 “(14) Section 703, 704, or 717 of the Civil
15 Rights Act of 1964 (42 U.S.C. 2000e-2, 2000e-3,
16 or 2000e-16).

17 “(15) Section 804, 805, 806, 808, or 818 of the
18 Fair Housing Act (42 U.S.C. 3604, 3605, 3606,
19 3608, or 3617).

20 “(16) Section 102, 202, 302, or 503 of the
21 Americans with Disabilities Act of 1990 (42 U.S.C.
22 12112, 12132, 12182, or 12203).

23 “(17) Any provision of Federal law (popularly
24 known as whistleblower protection provisions) pro-
25 hibiting the discharge of an employee, the discrimi-

1 nation against an employee, or any other form of re-
2 taliation or reprisal against an employee for assert-
3 ing rights or taking other actions permitted under
4 Federal law.

5 “(18) Any provision of State or local law, or
6 common law claims permitted under Federal, State,
7 or local law—

8 “(i) providing for the enforcement of
9 civil rights, or

10 “(ii) regulating any aspect of the em-
11 ployment relationship, including claims for
12 wages, compensation, or benefits, or pro-
13 hibiting the discharge of an employee, the
14 discrimination against an employee, or any
15 other form of retaliation or reprisal against
16 an employee for asserting rights or taking
17 other actions permitted by law.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to fees and costs paid after Decem-
20 ber 31, 2002, with respect to any judgment or settlement
21 occurring after such date.

1 **SEC. 644. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**
2 **UNDER NATIONAL HEALTH SERVICE CORPS**
3 **LOAN REPAYMENT PROGRAM AND CERTAIN**
4 **STATE LOAN REPAYMENT PROGRAMS.**

5 (a) IN GENERAL.—Section 108(f) (relating to stu-
6 dent loans) is amended by adding at the end the following
7 new paragraph:

8 “(4) PAYMENTS UNDER NATIONAL HEALTH
9 SERVICE CORPS LOAN REPAYMENT PROGRAM AND
10 CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In
11 the case of an individual, gross income shall not in-
12 clude any amount received under section 338B(g) of
13 the Public Health Service Act or under a State pro-
14 gram described in section 338I of such Act.”.

15 (b) TREATMENT FOR PURPOSES OF EMPLOYMENT
16 TAXES.—Each of the following provisions is amended by
17 inserting “108(f)(4),” after “74(c),”:

18 (1) Section 3121(a)(20).

19 (2) Section 3231(e)(5).

20 (3) Section 3306(b)(16).

21 (4) Section 3401(a)(19).

22 (5) Section 209(a)(17) of the Social Security
23 Act.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to amounts received by an indi-

1 vidual in taxable years beginning after December 31,
2 2003.

3 **SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CAR-**
4 **RIERS.**

5 (a) IN GENERAL.—Section 162(o) (relating to treat-
6 ment of certain reimbursed expenses of rural mail car-
7 riers) is amended by redesignating paragraph (2) as para-
8 graph (3) and by inserting after paragraph (1) the fol-
9 lowing:

10 “(2) SPECIAL RULE WHERE EXPENSES EXCEED
11 REIMBURSEMENTS.—Notwithstanding paragraph
12 (1)(A), if the expenses incurred by an employee for
13 the use of a vehicle in performing services described
14 in paragraph (1) exceed the qualified reimburse-
15 ments for such expenses, such excess shall be taken
16 into account in computing the miscellaneous
17 itemized deductions of the employee under section
18 67.”.

19 (b) CONFORMING AMENDMENT.—The heading for
20 section 162(o) is amended by striking “REIMBURSED”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2003.

1 **SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIP-**
2 **BUILDERS.**

3 (a) **IN GENERAL.**—In the case of a qualified naval
4 ship contract, the taxable income of such contract during
5 the 5-taxable year period beginning with the taxable year
6 in which the contract commencement date occurs shall be
7 determined under a method identical to the method used
8 in the case of a qualified ship contract (as defined in sec-
9 tion 10203(b)(2)(B) of the Revenue Act of 1987).

10 (b) **RECAPTURE OF TAX BENEFIT.**—In the case of
11 a qualified naval ship contract to which subsection (a) ap-
12 plies, the taxpayer's tax imposed by chapter 1 of the Inter-
13 nal Revenue Code of 1986 for the first taxable year fol-
14 lowing the 5-taxable year period described in subsection
15 (a) shall be increased by the excess (if any) of—

16 (1) the amount of tax which would have been
17 imposed during such period if this section had not
18 been enacted, over

19 (2) the amount of tax so imposed during such
20 period.

21 (c) **QUALIFIED NAVAL SHIP CONTRACT.**—For pur-
22 poses of this section—

23 (1) **IN GENERAL.**—The term “qualified naval
24 ship contract” means any contract or portion thereof
25 that is for the construction in the United States of
26 1 ship or submarine for the Federal Government if

1 the taxpayer reasonably expects the acceptance date
2 will occur no later than 9 years after the construc-
3 tion commencement date.

4 (2) ACCEPTANCE DATE.—The term “acceptance
5 date” means the date 1 year after the date on which
6 the Federal Government issues a letter of acceptance
7 or other similar document for the ship or submarine.

8 (3) CONSTRUCTION COMMENCEMENT DATE.—
9 The term “construction commencement date” means
10 the date on which the physical fabrication of any
11 section or component of the ship or submarine be-
12 gins.

13 (d) EFFECTIVE DATE.—This section shall apply to
14 contracts for ships or submarines with respect to which
15 the construction commencement date occurs after the date
16 of the enactment of this Act.

17 **SEC. 647. SUSPENSION OF POLICYHOLDERS SURPLUS AC-**
18 **COUNT PROVISIONS.**

19 (a) IN GENERAL.—Section 815 (relating to distribu-
20 tions to shareholders from pre-1984 policyholders surplus
21 account) is amended by adding at the end the following
22 new subsection:

23 “(g) APPLICATION OF SECTION.—This section shall
24 not apply to stock life insurance companies for taxable

1 years beginning after December 31, 2003, and beginning
2 before January 1, 2006.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2003.

6 **SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
7 **TIVES WITHOUT REDUCING PATRONAGE**
8 **DIVIDENDS.**

9 (a) IN GENERAL.—Subsection (a) of section 1388
10 (relating to patronage dividend defined) is amended by
11 adding at the end the following new sentence: “For pur-
12 poses of paragraph (3), net earnings shall not be reduced
13 by amounts paid during the year as dividends on capital
14 stock or other proprietary capital interests of the organiza-
15 tion to the extent that the articles of incorporation or by-
16 laws of such organization or other contract with patrons
17 provide that such dividends are in addition to amounts
18 otherwise payable to patrons which are derived from busi-
19 ness done with or for patrons during the taxable year.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to distributions in taxable years
22 beginning after the date of the enactment of this Act.

1 **SEC. 649. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
2 **COUNT OF WEATHER-RELATED CONDITIONS.**

3 (a) REPLACEMENT OF LIVESTOCK WITH OTHER
4 FARM PROPERTY.—Subsection (f) of section 1033 (relat-
5 ing to involuntary conversions) is amended—

6 (1) by inserting “drought, flood, or other
7 weather-related conditions, or” after “because of”,

8 (2) by inserting “in the case of soil contamina-
9 tion or other environmental contamination” after
10 “including real property”, and

11 (3) by striking “WHERE THERE HAS BEEN
12 ENVIRONMENTAL CONTAMINATION” in the heading
13 and inserting “IN CERTAIN CASES”.

14 (b) EXTENSION OF REPLACEMENT PERIOD OF IN-
15 VOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e)
16 of section 1033 (relating to involuntary conversions) is
17 amended—

18 (1) by striking “CONDITIONS.—For purposes”
19 and inserting “CONDITIONS.—

20 “(1) IN GENERAL.—For purposes”, and

21 (2) by adding at the end the following new
22 paragraph:

23 “(2) EXTENSION OF REPLACEMENT PERIOD.—

24 “(A) IN GENERAL.—In the case of
25 drought, flood, or other weather-related condi-
26 tions described in paragraph (1) which result in

1 the area being designated as eligible for assist-
2 ance by the Federal Government, subsection
3 (a)(2)(B) shall be applied with respect to any
4 converted property by substituting ‘4 years’ for
5 ‘2 years’.

6 “(B) FURTHER EXTENSION BY SEC-
7 RETARY.—The Secretary may extend on a re-
8 gional basis the period for replacement under
9 this section (after the application of subpara-
10 graph (A)) for such additional time as the Sec-
11 retary determines appropriate if the weather-re-
12 lated conditions which resulted in such applica-
13 tion continue for more than 3 years.”.

14 (c) INCOME INCLUSION RULES.—Section 451(e) (re-
15 lating to special rule for proceeds from livestock sold on
16 account of drought, flood, or other weather-related condi-
17 tions) is amended by adding at the end the following new
18 paragraph:

19 “(3) SPECIAL ELECTION RULES.—If section
20 1033(e)(2) applies to a sale or exchange of livestock
21 described in paragraph (1), the election under para-
22 graph (1) shall be deemed valid if made during the
23 replacement period described in such section.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2003.

4 **SEC. 650. MOTOR VEHICLE DEALER TRANSITIONAL ASSIST-**
5 **ANCE.**

6 (a) IN GENERAL.—For purposes of subtitle A of the
7 Internal Revenue Code of 1986, in the case of a taxpayer
8 who elects the application of this section and who was a
9 party to a motor vehicle sales and service agreement with
10 a motor vehicle manufacturer who announced in December
11 2000 that it would phase-out the motor vehicle brand to
12 which such agreement relates—

13 (1) amounts received by such taxpayer from
14 such manufacturer on account of the termination of
15 such agreement (hereafter in this section referred to
16 as “termination payment”) are considered to be re-
17 ceived for property used in the trade or business of
18 a motor vehicle retail sales and service dealership,
19 and

20 (2) to the extent such termination payment is
21 reinvested in property used in a motor vehicle retail
22 sales and service dealership located within the
23 United States, such property shall qualify as like-
24 kind replacement property to which section 1031 of

1 the Internal Revenue Code of 1986 shall apply with
2 the following modifications:

3 (A) Such section shall be applied without
4 regard to subparagraphs (A) and (B)(ii) of sub-
5 section (a)(3).

6 (B) The period described in section
7 1031(a)(3)(B) of such Code shall be applied by
8 substituting “2 years” for “180 days”.

9 (b) RULES FOR ELECTION.—

10 (1) FORM OF ELECTION.—The taxpayer shall
11 make an election under this section in such form
12 and manner as the Secretary of the Treasury may
13 prescribe and shall include in such election the
14 amount of the termination payment received, the
15 identification of the replacement property purchased,
16 and such other information as the Secretary may
17 prescribe.

18 (2) ELECTION ON AMENDED RETURN.—The
19 Secretary of the Treasury shall permit an election
20 under this section on an amended tax return for tax-
21 able years beginning before the date of the enact-
22 ment of this Act.

23 (c) STATUTE OF LIMITATIONS.—Notwithstanding the
24 provisions of any other law or rule of law, the statutory
25 period for the assessment for any deficiency attributable

1 to any termination payment gain shall be extended until
2 3 years after the date the Secretary of the Treasury is
3 notified by the taxpayer of the like-kind replacement prop-
4 erty or an intention not to replace.

5 (d) EFFECTIVE DATE.—This section shall apply to
6 amounts received after December 12, 2000, in taxable
7 years ending after such date.

8 **SEC. 651. EXPANSION OF DESIGNATED RENEWAL COMMU-**
9 **NITY AREA BASED ON 2000 CENSUS DATA.**

10 (a) RENEWAL COMMUNITIES.—Section 1400E (relat-
11 ing to designation of renewal communities) is amended by
12 adding at the end the following new subsection:

13 “(g) EXPANSION OF DESIGNATED AREAS.—

14 “(1) EXPANSION BASED ON 2000 CENSUS.—At
15 the request of the nominating entity with respect to
16 a renewal community, the Secretary of Housing and
17 Urban Development may expand the area of a re-
18 newal community to include any census tract—

19 “(A) which, at the time such community
20 was nominated, met the requirements of this
21 section for inclusion in such community but for
22 the failure of such tract to meet 1 or more of
23 the population and poverty rate requirements of
24 this section using 1990 census data, and

1 “(B) which meets all failed population and
2 poverty rate requirements of this section using
3 2000 census data.

4 “(2) EXPANSION TO CERTAIN AREAS WHICH DO
5 NOT MEET POPULATION REQUIREMENTS.—

6 “(A) IN GENERAL.—At the request of 1 or
7 more local governments and the State or States
8 in which an area described in subparagraph (B)
9 is located, the Secretary of Housing and Urban
10 Development may expand a designated area to
11 include such area.

12 “(B) AREA.—An area is described in this
13 subparagraph if—

14 “(i) the area is adjacent to at least 1
15 other area designated as a renewal commu-
16 nity,

17 “(ii) the area has a population less
18 than the population required under sub-
19 section (c)(2)(C), and

20 “(iii)(I) the area meets the require-
21 ments of subparagraphs (A) and (B) of
22 subsection (c)(2) and subparagraph (A) of
23 subsection (c)(3), or

24 “(II) the area contains a population
25 of less than 100 people.

1 “(3) APPLICABILITY.—Any expansion of a re-
2 newal community under this section shall take effect
3 as provided in subsection (b).”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this subsection shall take effect as if included in the
6 amendments made by section 101 of the Community Re-
7 newal Tax Relief Act of 2000.

8 **SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS**
9 **FOR PURPOSES OF DETERMINING WHETHER**
10 **HORSES ARE SECTION 1231 ASSETS.**

11 (a) IN GENERAL.—Subparagraph (A) of section
12 1231(b)(3) (relating to definition of property used in the
13 trade or business) is amended by striking “and horses”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2003.

17 **SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE**
18 **TAX REFORM.**

19 (a) ESTABLISHMENT.—

20 (1) IN GENERAL.—There is established the
21 “Blue Ribbon Commission on Comprehensive Tax
22 Reform” (in this section referred to as the “Com-
23 mission”).

24 (2) MEMBERSHIP.—

1 (A) COMPOSITION.—The Commission shall
2 be composed of 17 members of whom—

3 (i) 3 shall be appointed by the major-
4 ity leader of the Senate;

5 (ii) 3 shall be appointed by the minor-
6 ity leader of the Senate;

7 (iii) 3 shall be appointed by the
8 Speaker of the House of Representatives;

9 (iv) 3 shall be appointed by the minor-
10 ity leader of the House of Representatives;
11 and

12 (v) 5 shall be appointed by the Presi-
13 dent, of which no more than 3 shall be of
14 the same party as the President.

15 (B) FEDERAL EMPLOYEES.—The members
16 of the Commission may be employees or former
17 employees of the Federal Government.

18 (C) DATE.—The appointments of the
19 members of the Commission shall be made not
20 later than October 30, 2004.

21 (3) PERIOD OF APPOINTMENT; VACANCIES.—
22 Members shall be appointed for the life of the Com-
23 mission. Any vacancy in the Commission shall not
24 affect its powers, but shall be filled in the same
25 manner as the original appointment.

1 (4) INITIAL MEETING.—Not later than 30 days
2 after the date on which all members of the Commis-
3 sion have been appointed, the Commission shall hold
4 its first meeting.

5 (5) MEETINGS.—The Commission shall meet at
6 the call of the Chairman.

7 (6) QUORUM.—A majority of the members of
8 the Commission shall constitute a quorum, but a
9 lesser number of members may hold hearings.

10 (7) CHAIRMAN AND VICE CHAIRMAN.—The
11 President shall select a Chairman and Vice Chair-
12 man from among its members.

13 (b) DUTIES OF THE COMMISSION.—

14 (1) STUDY.—The Commission shall conduct a
15 thorough study of all matters relating to a com-
16 prehensive reform of the Federal tax system, includ-
17 ing the reform of the Internal Revenue Code of 1986
18 and the implementation (if appropriate) of other
19 types of tax systems.

20 (2) RECOMMENDATIONS.—The Commission
21 shall develop recommendations on how to com-
22 prehensively reform the Federal tax system in a
23 manner that generates appropriate revenue for the
24 Federal Government.

1 (3) REPORT.—Not later than 18 months after
2 the date on which all initial members of the commis-
3 sion have been appointed pursuant to subsection
4 (a)(2), the Commission shall submit a report to the
5 President and Congress which shall contain a de-
6 tailed statement of the findings and conclusions of
7 the Commission, together with its recommendations
8 for such legislation and administrative actions as it
9 considers appropriate.

10 (c) POWERS OF THE COMMISSION.—

11 (1) HEARINGS.—The Commission may hold
12 such hearings, sit and act at such times and places,
13 take such testimony, and receive such evidence as
14 the Commission considers advisable to carry out this
15 Act.

16 (2) INFORMATION FROM FEDERAL AGENCIES.—
17 The Commission may secure directly from any Fed-
18 eral department or agency such information as the
19 Commission considers necessary to carry out this
20 Act. Upon request of the Chairman of the Commis-
21 sion, the head of such department or agency shall
22 furnish such information to the Commission.

23 (3) POSTAL SERVICES.—The Commission may
24 use the United States mails in the same manner and

1 under the same conditions as other departments and
2 agencies of the Federal Government.

3 (4) GIFTS.—The Commission may accept, use,
4 and dispose of gifts or donations of services or prop-
5 erty.

6 (d) COMMISSION PERSONNEL MATTERS.—

7 (1) COMPENSATION OF MEMBERS.—Each mem-
8 ber of the Commission who is not an officer or em-
9 ployee of the Federal Government shall be com-
10 pensated at a rate equal to the daily equivalent of
11 the annual rate of basic pay prescribed for level IV
12 of the Executive Schedule under section 5315 of title
13 5, United States Code, for each day (including travel
14 time) during which such member is engaged in the
15 performance of the duties of the Commission. All
16 members of the Commission who are officers or em-
17 ployees of the United States shall serve without com-
18 pensation in addition to that received for their serv-
19 ices as officers or employees of the United States.

20 (2) TRAVEL EXPENSES.—The members of the
21 Commission shall be allowed travel expenses, includ-
22 ing per diem in lieu of subsistence, at rates author-
23 ized for employees of agencies under subchapter I of
24 chapter 57 of title 5, United States Code, while

1 away from their homes or regular places of business
2 in the performance of services for the Commission.

3 (3) STAFF.—

4 (A) IN GENERAL.—The Chairman of the
5 Commission may, without regard to the civil
6 service laws and regulations, appoint and termi-
7 nate an executive director and such other addi-
8 tional personnel as may be necessary to enable
9 the Commission to perform its duties. The em-
10 ployment of an executive director shall be sub-
11 ject to confirmation by the Commission.

12 (B) COMPENSATION.—The Chairman of
13 the Commission may fix the compensation of
14 the executive director and other personnel with-
15 out regard to chapter 51 and subchapter III of
16 chapter 53 of title 5, United States Code, relat-
17 ing to classification of positions and General
18 Schedule pay rates, except that the rate of pay
19 for the executive director and other personnel
20 may not exceed the rate payable for level V of
21 the Executive Schedule under section 5316 of
22 such title.

23 (4) DETAIL OF GOVERNMENT EMPLOYEES.—
24 Any Federal Government employee may be detailed
25 to the Commission without reimbursement, and such

1 detail shall be without interruption or loss of civil
2 service status or privilege.

3 (5) PROCUREMENT OF TEMPORARY AND INTER-
4 MITTENT SERVICES.—The Chairman of the Commis-
5 sion may procure temporary and intermittent serv-
6 ices under section 3109(b) of title 5, United States
7 Code, at rates for individuals which do not exceed
8 the daily equivalent of the annual rate of basic pay
9 prescribed for level V of the Executive Schedule
10 under section 5316 of such title.

11 (e) TERMINATION OF THE COMMISSION.—The Com-
12 mission shall terminate 90 days after the date on which
13 the Commission submits its report under subsection (b).

14 (f) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated such sums as are nec-
16 essary to the Commission to carry out this section.

17 **SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH**
18 **RESPECT TO S CORPORATION STOCK.**

19 (a) IN GENERAL.—Section 4975(d) of the Internal
20 Revenue Code of 1986 is amended by adding at the end
21 the following new flush sentences:

22 “A plan shall not be treated as violating the requirements
23 of section 401, 409, or subsection (e)(7), or as engaging
24 in a prohibited transaction for purposes of paragraph (3),
25 merely by reason of any distribution described in section

1 1368(a) with respect to S corporation stock which con-
2 stitutes qualifying employer securities if the distribution
3 is, in accordance with the plan provisions, used to make
4 payments on a loan described in paragraph (3) the pro-
5 ceeds of which were used to acquire the qualifying em-
6 ployer securities (whether or not allocated to participants).
7 The preceding sentence shall not apply in the case of a
8 distribution which is paid with respect to any employer
9 security which is allocated to a participant unless the plan
10 provides that employer securities with a fair market value
11 of not less than the amount of such distribution are allo-
12 cated to such participant for the year which (but for the
13 preceding sentence) such distribution would have been al-
14 located to such participant.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall take effect on January 1, 1998.

17 **SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REA-**
18 **SONABLY ANTICIPATED NEEDS OF A BUSI-**
19 **NESS FOR PURPOSES OF ACCUMULATED**
20 **EARNINGS TAX.**

21 (a) IN GENERAL.—Section 537(b) (relating to special
22 rules) is amended by adding at the end the following new
23 paragraph:

24 “(6) WORKING CAPITAL.—The reasonably an-
25 ticipated needs of a business for any taxable year

1 shall include working capital for the business in an
2 amount which is not less than the sum of the cost
3 of goods, operating expenses, taxes, and interest ex-
4 pense which the business incurred during the pre-
5 ceding taxable year. Any amounts incurred as part
6 of a plan a principal purpose of which is to increase
7 the limitation under this subsection shall not be
8 taken into account.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2003, and before January 1, 2009.

12 **Subtitle F—Revenue Provisions**

13 **PART I—GENERAL REVENUE PROVISIONS**

14 **SEC. 661. TREASURY REGULATIONS ON FOREIGN TAX** 15 **CREDIT.**

16 Section 901, as amended by this Act, is amended by
17 redesignating subsection (m) as subsection (n) and by in-
18 serting after subsection (l) the following new subsection:

19 “(m) REGULATIONS.—The Secretary may prescribe
20 regulations disallowing a credit under subsection (a) for
21 all or a portion of any foreign tax, or allocating a foreign
22 tax among 2 or more persons, in cases where the foreign
23 tax is imposed on any person in respect of income of an-
24 other person or in other cases involving the inappropriate

1 separation of the foreign tax from the related foreign in-
2 come.”.

3 **SEC. 662. NONATTRIBUTION OF CERTAIN MANUFACTURING**
4 **BY PERSONS OTHER THAN CONTROLLED**
5 **FOREIGN CORPORATION.**

6 (a) IN GENERAL.—Section 954(d) (defining foreign
7 base company sales income) is amended by adding at the
8 end the following new paragraph:

9 “(5) NONATTRIBUTION OF CERTAIN MANUFAC-
10 TURING ACTIVITIES.—For purposes of this sub-
11 section, in determining whether income of a con-
12 trolled foreign corporation is foreign base company
13 sales income, any manufacturing, production, or con-
14 struction by a person other than an individual who
15 is an employee of the corporation shall not be attrib-
16 uted to the corporation.”

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The amendment made by
19 this section shall apply to taxable years of controlled
20 foreign corporations beginning on or after the date
21 of the enactment of this Act, and to taxable years
22 of United States shareholders with or within which
23 such taxable years of foreign corporations end.

24 (2) NO INFERENCE.—Nothing in the amend-
25 ment made by this section shall be construed to infer

1 the proper treatment of manufacturing, production,
2 or construction for taxable years beginning before
3 the date of the enactment of this Act.

4 **SEC. 663. FREEZE OF PROVISIONS REGARDING SUSPEN-**
5 **SION OF INTEREST WHERE SECRETARY FAILS**
6 **TO CONTACT TAXPAYER.**

7 (a) IN GENERAL.—Section 6404(g) (relating to sus-
8 pension of interest and certain penalties where secretary
9 fails to contact taxpayer) is amended by striking “1-year
10 period (18-month period in the case of taxable years begin-
11 ning before January 1, 2004)” both places it appears and
12 inserting “18-month period”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 December 31, 2003.

16 **PART II—PENSION AND DEFERRED**
17 **COMPENSATION**

18 **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-**
19 **PENSATION PLANS.**

20 (a) IN GENERAL.—Subpart A of part I of subchapter
21 D of chapter 1 is amended by adding at the end the fol-
22 lowing new section:

1 taxable year of inclusion shall be increased
2 by the sum of—

3 “(I) the amount of interest deter-
4 mined under clause (ii), and

5 “(II) an amount equal to 10 per-
6 cent of the compensation which is re-
7 quired to be included in gross income.

8 “(ii) INTEREST.—For purposes of
9 clause (i), the interest determined under
10 this clause for any taxable year is the
11 amount of interest at the underpayment
12 rate on the underpayments that would
13 have occurred had the deferred compensa-
14 tion been includible in gross income for the
15 taxable year in which first deferred or, if
16 later, the first taxable in which such de-
17 ferred compensation is not subject to a
18 substantial risk of forfeiture.

19 “(2) DISTRIBUTIONS.—

20 “(A) IN GENERAL.—The requirements of
21 this paragraph are met if the plan provides that
22 compensation deferred under the plan may not
23 be distributed earlier than—

1 “(i) except as provided in subpara-
2 graph (B)(i), separation from service (as
3 determined by the Secretary),

4 “(ii) the date the participant becomes
5 disabled (within the meaning of subpara-
6 graph (C)),

7 “(iii) death,

8 “(iv) a specified time (or pursuant to
9 a fixed schedule) specified under the plan
10 as of the date of the deferral of such com-
11 pensation,

12 “(v) to the extent provided by the
13 Secretary, a change in the ownership or ef-
14 fective control of the corporation, or in the
15 ownership of a substantial portion of the
16 assets of the corporation, or

17 “(vi) the occurrence of an unforesee-
18 able emergency.

19 “(B) SPECIAL RULES.—

20 “(i) SEPARATION FROM SERVICE OF
21 SPECIFIED EMPLOYEES.—In the case of
22 specified employees, the requirement of
23 subparagraph (A)(i) is met only if distribu-
24 tions may not be made earlier than 6
25 months after the date of separation from

1 service. For purposes of the preceding sen-
2 tence, a specified employee is a key em-
3 ployee (as defined in section 416(i)) of a
4 corporation the stock in which is publicly
5 traded on an established securities market
6 or otherwise.

7 “(ii) CHANGES IN OWNERSHIP OR
8 CONTROL.—In the case of a participant
9 who is subject to the requirements of sec-
10 tion 16(a) of the Securities Exchange Act
11 of 1934, the requirement of subparagraph
12 (A)(v) is met only if distributions may not
13 be made earlier than 1 year after the date
14 of the change in ownership or effective
15 control.

16 “(iii) UNFORESEEABLE EMER-
17 GENCY.—For purposes of subparagraph
18 (A)(vi)—

19 “(I) IN GENERAL.—The term
20 ‘unforeseeable emergency’ means a se-
21 vere financial hardship to the partici-
22 pant or beneficiary resulting from a
23 sudden and unexpected illness or acci-
24 dent of the participant or beneficiary,
25 the participant’s or beneficiary’s

1 spouse, or the participant's or bene-
2 ficiary's dependent (as defined in sec-
3 tion 152(a)), loss of the participant's
4 or beneficiary's property due to cas-
5 ualty, or other similar extraordinary
6 and unforeseeable circumstances aris-
7 ing as a result of events beyond the
8 control of the participant or bene-
9 ficiary.

10 “(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-
11 graph (A)(vi) is met only if, as deter-
12 mined under regulations of the Sec-
13 retary, the amounts distributed with
14 respect to an emergency do not exceed
15 the amounts necessary to satisfy such
16 emergency plus amounts necessary to
17 pay taxes reasonably anticipated as a
18 result of the distribution, after taking
19 into account the extent to which such
20 hardship is or may be relieved
21 through reimbursement or compensa-
22 tion by insurance or otherwise or by
23 liquidation of the participant's or
24 beneficiary's assets (to the extent the
25

1 liquidation of such assets would not
2 itself cause severe financial hardship).

3 “(C) DISABLED.—For purposes of sub-
4 paragraph (A)(ii), a participant shall be consid-
5 ered disabled if the participant—

6 “(i) is unable to engage in any sub-
7 stantial gainful activity by reason of any
8 medically determinable physical or mental
9 impairment which can be expected to result
10 in death or can be expected to last for a
11 continuous period of not less than 12
12 months, or

13 “(ii) is, by reason of any medically de-
14 terminable physical or mental impairment
15 which can be expected to result in death or
16 can be expected to last for a continuous
17 period of not less than 12 months, receiv-
18 ing income replacement benefits for a pe-
19 riod of not less than 3 months under an
20 accident and health plan covering employ-
21 ees of the participant’s employer .

22 “(3) INVESTMENT OPTIONS.—The requirements
23 of this paragraph are met if the plan provides that
24 the investment options a participant may elect under
25 the plan—

1 “(A) are comparable to the investment op-
2 tions which a participant may elect under the
3 qualified employer plan of the employer which
4 has the fewest investment options, or

5 “(B) if there is no such qualified employer
6 plan, meet such requirements as the Secretary
7 may prescribe (including requirements limiting
8 such options to permissible investment options
9 specified by the Secretary).

10 “(4) ACCELERATION OF BENEFITS.—The re-
11 quirements of this paragraph are met if the plan
12 does not permit the acceleration of the time or
13 schedule of any payment under the plan, except as
14 provided by the Secretary.

15 “(5) ELECTIONS.—

16 “(A) IN GENERAL.—The requirements of
17 this paragraph are met if the requirements of
18 subparagraphs (B) and (C) are met.

19 “(B) INITIAL DEFERRAL DECISION.—The
20 requirements of this subparagraph are met if
21 the plan provides that compensation earned
22 during a taxable year may be deferred at the
23 participant’s election only if the election to
24 defer such compensation is made during the
25 preceding taxable year or at such other time as

1 provided in regulations. In the case of the first
2 year in which a participant becomes eligible to
3 participate in the plan, such election may be
4 made with respect to services to be performed
5 subsequent to the election within 30 days after
6 the date the participant becomes eligible to par-
7 ticipate in such plan.

8 “(C) CHANGES IN TIME AND FORM OF DIS-
9 TRIBUTION.—The requirements of this subpara-
10 graph are met if, in the case of a plan which
11 permits under a subsequent election a delay in
12 a payment or a change in the form of
13 payment—

14 “(i) the plan requires that such elec-
15 tion may not take effect until at least 12
16 months after the date on which the elec-
17 tion is made,

18 “(ii) in the case an election related to
19 a payment not described in clause (ii), (iii),
20 or (vi) of paragraph (2)(A), the plan re-
21 quires that the first payment with respect
22 to which such election is made be deferred
23 for a period of not less than 5 years from
24 the date such payment would otherwise
25 have been made, and

1 “(iii) the plan requires that any elec-
2 tion related to a payment described in
3 paragraph (2)(A)(iv) may not be made less
4 than 12 months prior to the date of the
5 first scheduled payment under such para-
6 graph.

7 A plan shall be treated as failing to meet the
8 requirements of this subparagraph if the plan
9 permits more than 1 subsequent election to
10 delay any payment.

11 “(b) RULES RELATING TO FUNDING.—

12 “(1) OFFSHORE PROPERTY IN A TRUST.—In
13 the case of assets set aside (directly or indirectly) in
14 a trust (or other arrangement determined by the
15 Secretary) for purposes of paying deferred com-
16 pensation under a nonqualified deferred compensa-
17 tion plan, such assets shall be treated for purposes
18 of section 83 as property transferred in connection
19 with the performance of services whether or not such
20 assets are available to satisfy claims of general
21 creditors—

22 “(A) at the time set aside if such assets
23 are located outside of the United States, or

1 “(B) at the time transferred if such assets
2 are subsequently transferred outside of the
3 United States.

4 This paragraph shall not apply to assets located in
5 a foreign jurisdiction if substantially all of the serv-
6 ices to which the nonqualified deferred compensation
7 relates are performed in such jurisdiction.

8 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
9 case of a nonqualified deferred compensation plan,
10 there is a transfer of property within the meaning
11 of section 83 as of the earlier of—

12 “(A) the date on which the plan first pro-
13 vides that assets will become restricted to the
14 provision of benefits under the plan in connec-
15 tion with a change in the employer’s financial
16 health, or

17 “(B) the date on which assets are so re-
18 stricted.

19 “(3) INCOME INCLUSION FOR OFFSHORE
20 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
21 each taxable year that assets treated as transferred
22 under this subsection remain set aside in a trust or
23 other arrangement subject to paragraph (1) or (2),
24 any increase in value in, or earnings with respect to,
25 such assets shall be treated as an additional transfer

1 of property under this subsection (to the extent not
2 previously included in income).

3 “(4) INTEREST ON TAX LIABILITY PAYABLE
4 WITH RESPECT TO TRANSFERRED PROPERTY.—

5 “(A) IN GENERAL.—If amounts are re-
6 quired to be included in gross income by reason
7 of paragraph (1) or (2) for a taxable year, the
8 tax imposed by this chapter for such taxable
9 year shall be increased by the sum of—

10 “(i) the amount of interest determined
11 under subparagraph (B), and

12 “(ii) an amount equal to 10 percent of
13 the amounts required to be included in
14 gross income.

15 “(B) INTEREST.—For purposes of sub-
16 paragraph (A), the interest determined under
17 this subparagraph for any taxable year is the
18 amount of interest at the underpayment rate on
19 the underpayments that would have occurred
20 had the amounts been includible in gross in-
21 come for the taxable year in which first de-
22 ferred or, if later, the first taxable in which
23 such amounts is not subject to a substantial
24 risk of forfeiture.

1 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
2 SION.—Nothing in this section shall be construed to pre-
3 vent the inclusion of amounts in gross income under any
4 other provision of this chapter or any other rule of law
5 earlier than the time provided in this section. Any amount
6 included in gross income under this section shall not be
7 required to be included in gross income under any other
8 provision of this chapter or any other rule of law later
9 than the time provided in this section.

10 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
11 For purposes of this section—

12 “(1) NONQUALIFIED DEFERRED COMPENSA-
13 TION PLAN.—The term ‘nonqualified deferred com-
14 pensation plan’ means any plan that provides for the
15 deferral of compensation, other than—

16 “(A) a qualified employer plan, and

17 “(B) any bona fide vacation leave, sick
18 leave, compensatory time, disability pay, or
19 death benefit plan.

20 “(2) QUALIFIED EMPLOYER PLAN.—The term
21 ‘qualified employer plan’ means—

22 “(A) any plan, contract, pension, account,
23 or trust described in subparagraph (A) or (B)
24 of section 219(g)(5), and

1 “(B) any eligible deferred compensation
2 plan (within the meaning of section 457(b)) of
3 an employer described in section 457(e)(1)(A).

4 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
5 The term ‘plan’ includes any agreement or arrange-
6 ment, including an agreement or arrangement that
7 includes one person.

8 “(4) SUBSTANTIAL RISK OF FORFEITURE.—The
9 rights of a person to compensation are subject to a
10 substantial risk of forfeiture if such person’s rights
11 to such compensation are conditioned upon the fu-
12 ture performance of substantial services by any indi-
13 vidual.

14 “(5) TREATMENT OF EARNINGS.—References to
15 deferred compensation shall be treated as including
16 references to income (whether actual or notional) at-
17 tributable to such compensation or such income.

18 “(e) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including
21 regulations—

22 “(1) providing for the determination of
23 amounts of deferral in the case of a nonqualified de-
24 ferred compensation plan which is a defined benefit
25 plan,

1 any exception otherwise applicable under
2 this subsection, and

3 “(ii) notwithstanding paragraph (1),
4 the entire amount of the payment shall be
5 treated as an excess parachute payment.

6 “(B) COORDINATION WITH OTHER PAY-
7 MENTS.—An applicable payment shall be taken
8 into account in determining whether any pay-
9 ment other than an applicable payment is a
10 parachute payment under paragraph (2) or an
11 excess parachute payment under paragraph (1).

12 “(C) APPLICABLE PAYMENT.—For pur-
13 poses of this paragraph, the term ‘applicable
14 payment’ means any distribution from a non-
15 qualified deferred compensation plan (as de-
16 fined in section 409A(d)) which is made—

17 “(i) to a participant who is subject to
18 the requirements of section 16(a) of the
19 Securities Exchange Act of 1934, and

20 “(ii) during the 1-year period fol-
21 lowing a change in the ownership or effec-
22 tive control of the corporation or in the
23 ownership of a substantial portion of the
24 assets of the corporation.”

25 (c) W-2 FORMS.—

1 (1) IN GENERAL.—Subsection (a) of section
2 6051 (relating to receipts for employees) is amended
3 by striking “and”, by striking the period at the end
4 of paragraph (12) and inserting “, and”, and by in-
5 serting after paragraph (12) the following new para-
6 graph:

7 “(13) the total amount of deferrals under a
8 nonqualified deferred compensation plan (within the
9 meaning of section 409A(d)).”

10 (2) THRESHOLD.—Subsection (a) of section
11 6051 is amended by adding at the end the following:
12 “In the case of the amounts required to be shown
13 by paragraph (13), the Secretary may (by regula-
14 tion) establish a minimum amount of deferrals below
15 which paragraph (13) does not apply.”

16 (d) CONFORMING AND CLERICAL AMENDMENTS.—

17 (1) Section 414(b) is amended by inserting
18 “409A,” after “408(p),”.

19 (2) Section 414(c) is amended by inserting
20 “409A,” after “408(p),”.

21 (3) The table of sections for such subpart A is
22 amended by adding at the end the following new
23 item:

 “Sec. 409A. Inclusion in gross income of deferred compensation
 under nonqualified deferred compensation plans.”

24 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to amounts deferred in tax-
3 able years beginning after December 31, 2004.

4 (2) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-
5 VIOUSLY DEFERRED.—The amendments made by
6 this section shall apply to earnings on deferred com-
7 pensation only to the extent that such amendments
8 apply to such compensation.

9 (f) GUIDANCE RELATING TO CHANGE OF OWNER-
10 SHIP OR CONTROL.—Not later than 90 days after the date
11 of the enactment of this Act, the Secretary of the Treasury
12 shall issue guidance on what constitutes a change in own-
13 ership or effective control for purposes of section 409A
14 of the Internal Revenue Code of 1986, as added by this
15 section.

16 (g) GUIDANCE RELATING TO TERMINATION OF CER-
17 TAIN EXISTING ARRANGEMENTS.—Not later than 90 days
18 after the date of the enactment of this Act, the Secretary
19 of the Treasury shall issue guidance providing a limited
20 period during which an individual participating in a non-
21 qualified deferred compensation plan adopted on or before
22 December 31, 2004, may, without violating the require-
23 ments of paragraphs (2), (3), (4), and (5) of section
24 409A(a)(2) of the Internal Revenue Code of 1986 (as
25 added by this section), terminate participation or cancel

1 an outstanding deferral election with regard to amounts
2 earned after December 31, 2004, if such amounts are in-
3 cludible in income as earned.

4 **SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE**
5 **EXERCISE OF STOCK OPTIONS AND RE-**
6 **STRICTED STOCK GAINS THROUGH DE-**
7 **FERRED COMPENSATION ARRANGEMENTS.**

8 (a) IN GENERAL.—Section 83 (relating to property
9 transferred in connection with performance of services) is
10 amending by adding at the end the following new sub-
11 section:

12 “(i) PROHIBITION ON ADDITIONAL DEFERRAL
13 THROUGH DEFERRED COMPENSATION ARRANGE-
14 MENTS.—If a taxpayer elects to exchange an option to
15 purchase employer securities—

16 “(1) to which subsection (a) applies, or
17 “(2) which is described in subsection (e)(3),
18 or any other property based on employer securities trans-
19 ferred to the taxpayer, for a right to receive future pay-
20 ments, then, notwithstanding any other provision of this
21 title, there shall be included in gross income for the tax-
22 able year of the exchange an amount equal to the present
23 value of such right (or such other amount as the Secretary
24 may by regulations specify). For purposes of this sub-

1 section, the term ‘employer securities’ includes any secu-
2 rity issued by the employer.”

3 (b) CONTROLLED GROUP RULES.—Section 414(t)(2)
4 is amended by inserting “83(i),” after “79,”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to any exchange after December
7 31, 2004.

8 **SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLE-**
9 **MENTAL WAGE PAYMENTS IN EXCESS OF**
10 **\$1,000,000.**

11 (a) IN GENERAL.—If an employer elects under
12 Treasury Regulation 31.3402(g)-1 to determine the
13 amount to be deducted and withheld from any supple-
14 mental wage payment by using a flat percentage rate, the
15 rate to be used in determining the amount to be so de-
16 ducted and withheld shall not be less than 28 percent (or
17 the corresponding rate in effect under section 1(i)(2) of
18 the Internal Revenue Code of 1986 for taxable years be-
19 ginning in the calendar year in which the payment is
20 made).

21 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

22 (1) IN GENERAL.—Notwithstanding subsection
23 (a), if the supplemental wage payment, when added
24 to all such payments previously made by the em-
25 ployer to the employee during the calendar year, ex-

1 ceeds \$1,000,000, the rate used with respect to such
2 excess shall be equal to the maximum rate of tax in
3 effect under section 1 of such Code for taxable years
4 beginning in such calendar year.

5 (2) AGGREGATION.—All persons treated as a
6 single employer under subsection (a) or (b) of sec-
7 tion 52 of the Internal Revenue Code of 1986 shall
8 be treated as a single employer for purposes of this
9 subsection.

10 (c) CONFORMING AMENDMENT.—Section 13273 of
11 the Revenue Reconciliation Act of 1993 (Public Law 103–
12 66) is repealed.

13 (d) EFFECTIVE DATE.—The provisions of, and the
14 amendment made by, this section shall apply to payments
15 made after December 31, 2003.

16 **SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
17 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
18 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
19 **QUIREMENTS.**

20 (a) IN GENERAL.—Section 421 of the Internal Rev-
21 enue Code of 1986 (relating to general rules for certain
22 stock options) is amended by adding at the end the fol-
23 lowing new subsection:

24 “(d) CERTAIN SALES TO COMPLY WITH CONFLICT-
25 OF-INTEREST REQUIREMENTS.—If—

1 in the contract with respect to the plan shall not include
2 employer or employee contributions to the plan (or any
3 earnings on such contributions) unless such contributions
4 or earnings were subject to taxation by the United States
5 or any foreign government.”

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to distributions on or after the date
8 of the enactment of this Act.

9 **TITLE VII—EXTENSIONS OF**
10 **CERTAIN EXPIRING PROVISIONS**

11 **Subtitle A—Extensions**

12 **SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS**
13 **TO MENTAL HEALTH BENEFITS.**

14 (a) IN GENERAL.—Section 9812(f) is amended—

15 (1) by striking “and” at the end of paragraph
16 (1), and

17 (2) by striking paragraph (2) and inserting the
18 following new paragraphs:

19 “(2) on or after January 1, 2004, and before
20 the date of the enactment of the Jumpstart Our
21 Business Strength (JOBS) Act, and

22 “(3) after December 31, 2005.”.

23 (b) ERISA.—Section 712(f) of the Employee Retire-
24 ment Income Security Act of 1974 (29 U.S.C. 1185a(f))

1 is amended by striking “on or after December 31, 2004”
2 and inserting “after December 31, 2005”.

3 (c) PHSA.—Section 2705(f) of the Public Health
4 Service Act (42 U.S.C. 300gg-5(f)) is amended by striking
5 “on or after December 31, 2004” and inserting “after De-
6 cember 31, 2005”.

7 (d) EFFECTIVE DATES.—

8 (1) SUBSECTION (a).—The amendments made
9 by subsection (a) shall apply to benefits for services
10 furnished on or after December 31, 2003.

11 (2) SUBSECTIONS (b) AND (c).—The amend-
12 ments made by subsections (b) and (c) shall apply
13 to benefits for services furnished on or after Decem-
14 ber 31, 2004.

15 **SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT**
16 **AND WELFARE-TO-WORK CREDIT.**

17 (a) EXTENSION OF CREDIT.—

18 (1) Subparagraph (B) of section 51(c)(4) is
19 amended by striking “December 31, 2003” and in-
20 serting “December 31, 2005”.

21 (2) Subsection (f) of section 51A is amended by
22 striking by striking “December 31, 2003” and in-
23 serting “December 31, 2005”.

24 (b) ELIGIBILITY OF EX-FELONS DETERMINED
25 WITHOUT REGARD TO FAMILY INCOME.—Paragraph (4)

1 of section 51(d) is amended by adding “and” at the end
2 of subparagraph (A), by striking “, and” at the end of
3 subparagraph (B) and inserting a period, and by striking
4 all that follows subparagraph (B).

5 (c) INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF
6 FOOD STAMP RECIPIENTS.—Clause (i) of section
7 51(d)(8)(A) is amended by striking “25” and inserting
8 “40”.

9 (d) INCREASE IN MAXIMUM AGE FOR DESIGNATED
10 COMMUNITY RESIDENTS.—

11 (1) IN GENERAL.—Paragraph (5) of section
12 51(d) is amended to read as follows:

13 “(5) DESIGNATED COMMUNITY RESIDENTS.—

14 “(A) IN GENERAL.—The term ‘designated
15 community resident’ means any individual who
16 is certified by the designated local agency—

17 “(i) as having attained age 18 but not
18 age 40 on the hiring date, and

19 “(ii) as having his principal place of
20 abode within an empowerment zone, enter-
21 prise community, or renewal community.

22 “(B) INDIVIDUAL MUST CONTINUE TO RE-
23 SIDE IN ZONE OR COMMUNITY.—In the case of
24 a designated community resident, the term
25 ‘qualified wages’ shall not include wages paid or

1 incurred for services performed while the indi-
2 vidual's principal place of abode is outside an
3 empowerment zone, enterprise community, or
4 renewal community.”

5 (2) CONFORMING AMENDMENT.—Subparagraph
6 (D) of section 51(d)(1) is amended to read as fol-
7 lows:

8 “(D) a designated community resident,”.

9 (e) CLARIFICATION OF TREATMENT OF INDIVIDUALS
10 UNDER INDIVIDUAL WORK PLANS.—Subparagraph (B)
11 of section 51(d)(6) (relating to vocational rehabilitation
12 referral) is amended by striking “or” at the end of clause
13 (i), by striking the period at the end of clause (ii) and
14 inserting “, or”, and by adding at the end the following
15 new clause:

16 “(iii) an individual work plan devel-
17 oped and implemented by an employment
18 network pursuant to subsection (g) of sec-
19 tion 1148 of the Social Security Act with
20 respect to which the requirements of such
21 subsection are met.”

22 (f) EFFECTIVE DATES.—

23 (1) EXTENSION OF CREDITS.—The amend-
24 ments made by subsection (a) shall apply to individ-

1 uals who begin work for the employer after Decem-
2 ber 31, 2003.

3 (2) MODIFICATIONS.—The amendments made
4 by subsections (b), (c), (d), and (e) shall apply to in-
5 dividuals who begin work for the employer after De-
6 cember 31, 2004.

7 **SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CRED-**
8 **IT WITH WELFARE-TO-WORK CREDIT.**

9 (a) IN GENERAL.—Paragraph (1) of section 51(d) is
10 amended by striking “or” at the end of subparagraph (G),
11 by striking the period at the end of subparagraph (H) and
12 inserting “, or”, and by adding at the end the following
13 new subparagraph:

14 “(I) a long-term family assistance recipi-
15 ent.”

16 (b) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—
17 Subsection (d) of section 51 is amended by redesignating
18 paragraphs (10) through (12) as paragraphs (11) through
19 (13), respectively, and by inserting after paragraph (9) the
20 following new paragraph:

21 “(10) LONG-TERM FAMILY ASSISTANCE RECIPI-
22 ENT.—The term ‘long-term family assistance recipi-
23 ent’ means any individual who is certified by the
24 designated local agency—

1 “(A) as being a member of a family receiv-
2 ing assistance under a IV-A program (as de-
3 fined in paragraph (2)(B)) for at least the 18-
4 month period ending on the hiring date,

5 “(B)(i) as being a member of a family re-
6 ceiving such assistance for 18 months beginning
7 after August 5, 1997, and

8 “(ii) as having a hiring date which is not
9 more than 2 years after the end of the earliest
10 such 18-month period, or

11 “(C)(i) as being a member of a family
12 which ceased to be eligible for such assistance
13 by reason of any limitation imposed by Federal
14 or State law on the maximum period such as-
15 sistance is payable to a family, and

16 “(ii) as having a hiring date which is not
17 more than 2 years after the date of such ces-
18 sation.”

19 (c) INCREASED CREDIT FOR EMPLOYMENT OF LONG-
20 TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is
21 amended by inserting after subsection (d) the following
22 new subsection:

23 “(e) CREDIT FOR EMPLOYMENT OF LONG-TERM
24 FAMILY ASSISTANCE RECIPIENTS.—

1 “(1) IN GENERAL.—With respect to the em-
2 ployment of a long-term family assistance
3 recipient—

4 “(A) the amount of the work opportunity
5 credit determined under this section for the tax-
6 able year shall include 50 percent of the quali-
7 fied second-year wages for such year, and

8 “(B) in lieu of applying subsection (b)(3),
9 the amount of the qualified first-year wages,
10 and the amount of qualified second-year wages,
11 which may be taken into account with respect
12 to such a recipient shall not exceed \$10,000 per
13 year.

14 “(2) QUALIFIED SECOND-YEAR WAGES.—For
15 purposes of this subsection, the term ‘qualified sec-
16 ond-year wages’ means qualified wages—

17 “(A) which are paid to a long-term family
18 assistance recipient, and

19 “(B) which are attributable to service ren-
20 dered during the 1-year period beginning on the
21 day after the last day of the 1-year period with
22 respect to such recipient determined under sub-
23 section (b)(2).

24 “(3) SPECIAL RULES FOR AGRICULTURAL AND
25 RAILWAY LABOR.—If such recipient is an employee

1 to whom subparagraph (A) or (B) of subsection
2 (h)(1) applies, rules similar to the rules of such sub-
3 paragraphs shall apply except that—

4 “(A) such subparagraph (A) shall be ap-
5 plied by substituting ‘\$10,000’ for ‘\$6,000’, and

6 “(B) such subparagraph (B) shall be ap-
7 plied by substituting ‘\$833.33’ for ‘\$500’.”

8 (d) REPEAL OF SEPARATE WELFARE-TO-WORK
9 CREDIT.—

10 (1) IN GENERAL.—Section 51A is hereby re-
11 pealed.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for subpart F of part IV of subchapter A of
14 chapter 1 is amended by striking the item relating
15 to section 51A.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to individuals who begin work for
18 the employer after December 31, 2004.

19 **SEC. 704. QUALIFIED ZONE ACADEMY BONDS.**

20 (a) IN GENERAL.—Paragraph (1) of section
21 1397E(e) is amended by striking “and 2003” and insert-
22 ing “2003, 2004, and 2005”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to obligations issued after De-
25 cember 31, 2003.

1 **SEC. 705. COVER OVER OF TAX ON DISTILLED SPIRITS.**

2 (a) IN GENERAL.—Paragraph (1) of section 7652(f)
3 is amended by striking “January 1, 2004” and inserting
4 “January 1, 2006”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to articles brought into the
7 United States after December 31, 2003.

8 **SEC. 706. DEDUCTION FOR CORPORATE DONATIONS OF**
9 **SCIENTIFIC PROPERTY AND COMPUTER**
10 **TECHNOLOGY.**

11 (a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—

12 (1) IN GENERAL.—Clause (ii) of section
13 170(e)(4)(B) (defining qualified research contribu-
14 tions) is amended by inserting “or assembled” after
15 “constructed”.

16 (2) CONFORMING AMENDMENT.—Clause (iii) of
17 section 170(e)(4)(B) is amended by inserting “or as-
18 sembling” after “construction”.

19 (b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR
20 EDUCATIONAL PURPOSES.—

21 (1) IN GENERAL.—Clause (ii) of section
22 170(e)(6)(B) is amended by inserting “or assem-
23 bled” after “constructed” and “or assembling” after
24 “construction”.

1 (2) SPECIAL RULE EXTENDED.—Section
2 170(e)(6)(G) is amended by striking “2003” and in-
3 serting “2005”.

4 (3) CONFORMING AMENDMENTS.—Subpara-
5 graph (D) of section 170(e)(6) is amended by insert-
6 ing “or assembled” after “constructed” and “or as-
7 sembling” after “construction”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to contributions made in taxable
10 years beginning after December 31, 2003.

11 **SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL**
12 **TEACHERS.**

13 (a) IN GENERAL.—Subparagraph (D) of section
14 62(a)(2) is amended by striking “or 2003” and inserting
15 “, 2003, 2004, or 2005”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to expenses paid or incurred in
18 taxable years beginning after December 31, 2003.

19 **SEC. 708. EXPENSING OF ENVIRONMENTAL REMEDIATION**
20 **COSTS.**

21 (a) EXTENSION OF TERMINATION DATE.—Sub-
22 section (h) of section 198 is amended by striking “Decem-
23 ber 31, 2003” and inserting “December 31, 2005”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to expenditures paid or incurred
3 after December 31, 2003.

4 **SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY**
5 **ZONE BENEFITS.**

6 (a) EXTENSION OF TAX-EXEMPT BOND FINANC-
7 ING.—Subparagraph (D) of section 1400L(d)(2) is
8 amended by striking “2005” and inserting “2006”.

9 (b) CLARIFICATION OF BONDS ELIGIBLE FOR AD-
10 VANCE REFUNDING.—Section 1400L(e)(2)(B) (relating to
11 bonds described) is amended by striking “, or” and insert-
12 ing “or the Municipal Assistance Corporation, or”.

13 (c) ELECTION OUT TECHNICAL AMENDMENT.—Sub-
14 section (c) of section 1400L is amended by adding at the
15 end the following new paragraph:

16 “(5) ELECTION OUT.—For purposes of this
17 subsection, rules similar to the rules of section
18 168(k)(2)(C)(iii) shall apply.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 subsections (b) and (c) shall take effect as if included in
21 the amendments made by section 301 of the Job Creation
22 and Worker Assistance Act of 2002.

1 **SEC. 710. TEMPORARY SPECIAL RULES FOR TAXATION OF**
2 **LIFE INSURANCE COMPANIES.**

3 (a) **IN GENERAL.**—Subsection (j) of section 809 is
4 amended by striking “or 2003” and inserting “2003,
5 2004, or 2005”.

6 (b) **EFFECTIVE DATE.**—The amendment made by
7 subsection (a) shall apply to taxable years beginning after
8 December 31, 2003.

9 **SEC. 711. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**
10 **TRICT OF COLUMBIA.**

11 (a) **DESIGNATION OF ZONE.**—Subsection (f) of sec-
12 tion 1400 is amended by striking “December 31, 2003”
13 both places it appears and inserting “December 31,
14 2005”.

15 (b) **TAX-EXEMPT ECONOMIC DEVELOPMENT**
16 **BONDS.**—Subsection (b) of section 1400A is amended by
17 striking “December 31, 2003” and inserting “December
18 31, 2005”.

19 (c) **ZERO PERCENT CAPITAL GAINS RATE.**—

20 (1) **IN GENERAL.**—Subsection (b) of section
21 1400B is amended by striking “January 1, 2004”
22 each place it appears and inserting “January 1,
23 2006”.

24 (2) **CONFORMING AMENDMENTS.**—

25 (A) Section 1400B(e)(2) is amended—

1 (i) by striking “December 31, 2008”
2 and inserting “December 31, 2010”, and
3 (ii) by striking “2008” in the heading
4 and inserting “2010”.

5 (B) Section 1400B(g)(2) is amended by
6 striking “December 31, 2008” and inserting
7 “December 31, 2010”.

8 (C) Section 1400F(d) is amended by strik-
9 ing “December 31, 2008” and inserting “De-
10 cember 31, 2010”.

11 (d) FIRST-TIME HOMEBUYER CREDIT.—Subsection
12 (i) of section 1400C is amended by striking “January 1,
13 2004” and inserting “January 1, 2006”.

14 (e) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall take effect on January 1, 2004.

18 (2) TAX-EXEMPT ECONOMIC DEVELOPMENT
19 BONDS.—The amendment made by subsection (b)
20 shall apply to obligations issued after the date of the
21 enactment of this Act.

1 **SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILI-**
2 **TATE COMBINED EMPLOYMENT TAX REPORT-**
3 **ING.**

4 (a) IN GENERAL.—Paragraph (5) of section 6103(d)
5 (relating to disclosure to State tax officials and State and
6 local law enforcement agencies) is amended to read as fol-
7 lows:

8 “(5) DISCLOSURE FOR COMBINED EMPLOY-
9 MENT TAX REPORTING.—The Secretary may disclose
10 taxpayer identity information and signatures to any
11 agency, body, or commission of any State for the
12 purpose of carrying out with such agency, body, or
13 commission a combined Federal and State employ-
14 ment tax reporting program approved by the Sec-
15 retary. Subsections (a)(2) and (p)(4) and sections
16 7213 and 7213A shall not apply with respect to dis-
17 closures or inspections made pursuant to this para-
18 graph.”.

19 (b) EFFECTIVE DATE.—The amendment made
20 by this section shall take effect on the date of the
21 enactment of this Act.

22 **SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL**
23 **CREDITS AGAINST REGULAR AND MINIMUM**
24 **TAX LIABILITY.**

25 (a) IN GENERAL.—Paragraph (2) of section 26(a) is
26 amended—

1 (1) by striking “RULE FOR 2000, 2001, 2002, AND
2 2003.—” and inserting “RULE FOR TAXABLE YEARS
3 2000 THROUGH 2004.—”, and

4 (2) by striking “or 2003” and inserting “2003,
5 or 2004”.

6 (b) CONFORMING PROVISIONS.—

7 (1) Section 904(h) is amended by striking “or
8 2003” and inserting “2003, or 2004”.

9 (2) The amendments made by sections 201(b),
10 202(f), and 618(b) of the Economic Growth and Tax
11 Relief Reconciliation Act of 2001 shall not apply to
12 taxable years beginning during 2004.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2003.

16 **SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM**
17 **CERTAIN RENEWABLE RESOURCES.**

18 (a) IN GENERAL.—Subparagraphs (A), (B), and (C)
19 of section 45(c)(3) are each amended by striking “January
20 1, 2004” and inserting “January 1, 2005”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 subsection (a) shall apply to facilities placed in service
23 after December 31, 2003.

1 **SEC. 715. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**
2 **TION FOR OIL AND NATURAL GAS PRODUCED**
3 **FROM MARGINAL PROPERTIES.**

4 (a) IN GENERAL.—Subparagraph (H) of section
5 613A(c)(6) is amended by striking “January 1, 2004” and
6 inserting “January 1, 2005”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to taxable years beginning after
9 December 31, 2003.

10 **SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.**

11 Section 45A(f) (relating to termination) is amended
12 by striking “December 31, 2004” and inserting “Decem-
13 ber 31, 2005”.

14 **SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS**
15 **PROPERTY ON INDIAN RESERVATION.**

16 Section 168(j)(8) (relating to termination) is amend-
17 ed by striking “December 31, 2004” and inserting “De-
18 cember 31, 2005”.

19 **SEC. 718. DISCLOSURE OF RETURN INFORMATION RELAT-**
20 **ING TO STUDENT LOANS.**

21 Section 6103(l)(13)(D) (relating to termination) is
22 amended by striking “December 31, 2004” and inserting
23 “December 31, 2005”.

1 **SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PENSION**
2 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

3 (a) AMENDMENT OF INTERNAL REVENUE CODE OF
4 1986.—Paragraph (5) of section 420(b) (relating to expi-
5 ration) is amended by striking “December 31, 2005” and
6 inserting “December 31, 2013”.

7 (b) AMENDMENTS OF ERISA.—

8 (1) Section 101(e)(3) of the Employee Retire-
9 ment Income Security Act of 1974 (29 U.S.C.
10 1021(e)(3)) is amended by striking “Tax Relief Ex-
11 tension Act of 1999” and inserting “Jumpstart Our
12 Business Strength (JOBS) Act”.

13 (2) Section 403(c)(1) of such Act (29 U.S.C.
14 1103(c)(1)) is amended by striking “Tax Relief Ex-
15 tension Act of 1999” and inserting “Jumpstart Our
16 Business Strength (JOBS) Act”.

17 (3) Paragraph (13) of section 408(b) of such
18 Act (29 U.S.C. 1108(b)(3)) is amended—

19 (A) by striking “January 1, 2006” and in-
20 serting “January 1, 2014”, and

21 (B) by striking “Tax Relief Extension Act
22 of 1999” and inserting “Jumpstart Our Busi-
23 ness Strength (JOBS) Act”.

24 (c) MINIMUM COST REQUIREMENTS.—

1 (1) IN GENERAL.—Section 420(e)(3)(E) is
2 amended by adding at the end the following new
3 clause:

4 “(ii) INSIGNIFICANT COST REDUC-
5 TIONS PERMITTED.—

6 “(I) IN GENERAL.—An eligible
7 employer shall not be treated as fail-
8 ing to meet the requirements of this
9 paragraph for any taxable year if, in
10 lieu of any reduction of retiree health
11 coverage permitted under the regula-
12 tions prescribed under clause (i), the
13 employer reduces applicable employer
14 cost by an amount not in excess of the
15 reduction in costs which would have
16 occurred if the employer had made the
17 maximum permissible reduction in re-
18 tiree health coverage under such regu-
19 lations. In applying such regulations
20 to any subsequent taxable year, any
21 reduction in applicable employer cost
22 under this clause shall be treated as if
23 it were an equivalent reduction in re-
24 tiree health coverage.

1 “(II) ELIGIBLE EMPLOYER.—For
2 purposes of subclause (I), an employer
3 shall be treated as an eligible em-
4 ployer for any taxable year if, for the
5 preceding taxable year, the qualified
6 current retiree health liabilities of the
7 employer were at least 5 percent of
8 the gross receipts of the employer.
9 For purposes of this subclause, the
10 rules of paragraphs (2), (3)(B), and
11 (3)(C) of section 448(c) shall apply in
12 determining the amount of an employ-
13 er’s gross receipts.”

14 (2) CONFORMING AMENDMENT.—Section
15 420(c)(3)(E) is amended by striking “The Sec-
16 retary” and inserting:

17 “(i) IN GENERAL.—The Secretary”.

18 (3) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply to taxable years end-
20 ing after the date of the enactment of this Act.

21 **SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR**
22 **QUALIFIED ELECTRIC VEHICLES.**

23 (a) IN GENERAL.—Section 30(b) is amended by
24 striking paragraph (2) and by redesignating paragraph
25 (3) as paragraph (2).

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 53(d)(1)(B)(iii) is amended by
3 striking “section 30(b)(3)(B)” and inserting “sec-
4 tion 30(b)(2)(B)”.

5 (2) Section 55(c)(2) is amended by striking
6 “30(b)(3)” and inserting “30(b)(2)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to property placed in service after
9 December 31, 2003.

10 **SEC. 721. ELIMINATION OF PHASEOUT FOR DEDUCTION**
11 **FOR CLEAN-FUEL VEHICLE PROPERTY.**

12 (a) IN GENERAL.—Paragraph (1) of section 179A(b)
13 is amended to read as follows:

14 “(1) QUALIFIED CLEAN-FUEL VEHICLE PROP-
15 erty.—The cost which may be taken into account
16 under subsection (a)(1)(A) with respect to any
17 motor vehicle shall not exceed—

18 “(A) in the case of a motor vehicle not de-
19 scribed in subparagraph (B) or (C), \$2,000,

20 “(B) in the case of any truck or van with
21 a gross vehicle weight rating greater than
22 10,000 pounds but not greater than 26,000
23 pounds, \$5,000, or

24 “(C) \$50,000 in the case of—

1 “(i) a truck or van with a gross vehi-
2 cle weight rating greater than 26,000
3 pounds, or

4 “(ii) any bus which has a seating ca-
5 pacity of at least 20 adults (not including
6 the driver).”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to property placed in service
9 after December 31, 2003.

10 **Subtitle B—Revenue Provisions**

11 **SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND** 12 **AIRPLANES.**

13 (a) IN GENERAL.—Subsection (f) of section 170 (re-
14 lating to disallowance of deduction in certain cases and
15 special rules) is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(11) CONTRIBUTIONS OF USED MOTOR VEHI-
18 CLES, BOATS, AND AIRPLANES.—

19 “(A) IN GENERAL.—In the case of a con-
20 tribution of a qualified vehicle in excess of
21 \$500—

22 “(i) paragraph (8) shall not apply and
23 no deduction shall be allowed under sub-
24 section (a) for such contribution unless the
25 taxpayer substantiates the contribution by

1 a contemporaneous written acknowledge-
2 ment of the contribution by the donee or-
3 ganization that meets the requirements of
4 subparagraph (B) and includes the ac-
5 knowledgement with the taxpayer's return
6 of tax which includes the deduction, and

7 “(ii) if the organization sells the vehi-
8 cle without any significant intervening use
9 or material improvement of such vehicle by
10 the organization, the amount of the deduc-
11 tion allowed under subsection (a) shall not
12 exceed the gross proceeds received from
13 such sale.

14 “(B) CONTENT OF ACKNOWLEDGEMENT.—
15 An acknowledgement meets the requirements of
16 this subparagraph if it includes the following
17 information:

18 “(i) The name and taxpayer identi-
19 fication number of the donor.

20 “(ii) The vehicle identification number
21 or similar number.

22 “(iii) In the case of a qualified vehicle
23 to which subparagraph (A)(ii) does not
24 apply and which is sold by the donee
25 organization—

1 “(I) a certification that the vehi-
2 cle was sold in an arm’s length trans-
3 action between unrelated parties,

4 “(II) the gross proceeds from the
5 sale, and

6 “(III) the amount of such gross
7 proceeds is the deductible amount.

8 “(iv) In the case of a qualified vehicle
9 to which subparagraph (A)(ii) does not
10 apply—

11 “(I) a certification of the in-
12 tended use or material improvement
13 of the vehicle and the intended dura-
14 tion of such use, and

15 “(II) a certification that the vehi-
16 cle would not be transferred in ex-
17 change for money, other property, or
18 services before completion of such use
19 or improvement.

20 “(C) CONTEMPORANEOUS.—For purposes
21 of subparagraph (A), an acknowledgement shall
22 be considered to be contemporaneous if the
23 donee organization provides it within 30 days
24 of—

1 “(i) the sale of the qualified vehicle,
2 or

3 “(ii) in the case of an acknowledge-
4 ment including a certification described in
5 subparagraph (B)(iv), the contribution of
6 the qualified vehicle.

7 “(D) INFORMATION TO SECRETARY.—A
8 donee organization required to provide an ac-
9 knowledgement under this paragraph shall pro-
10 vide to the Secretary the information contained
11 in the acknowledgement. Such information shall
12 be provided at such time and in such manner
13 as the Secretary may prescribe.

14 “(E) QUALIFIED VEHICLE.—For purposes
15 of this paragraph, the term ‘qualified vehicle’
16 means any—

17 “(i) self-propelled vehicle manufac-
18 tured primarily for use on public streets,
19 roads, and highways,

20 “(ii) boat, or

21 “(iii) airplane.

22 Such term shall not include any property which
23 is described in section 1221(a)(1).

24 “(F) REGULATIONS OR OTHER GUID-
25 ANCE.—The Secretary shall prescribe such reg-

1 ulations or other guidance as may be necessary
2 to carry out the purposes of this paragraph.”.

3 (b) PENALTY FOR FRAUDULENT ACKNOWLEDG-
4 MENTS.—

5 (1) IN GENERAL.—Part I of subchapter B of
6 chapter 68 (relating to assessable penalties) is
7 amended adding at the end the following new sec-
8 tion:

9 **“SEC. 6717. FRAUDULENT ACKNOWLEDGMENTS WITH RE-**
10 **SPECT TO DONATIONS OF MOTOR VEHICLES,**
11 **BOATS, AND AIRPLANES.**

12 “Any donee organization required under section
13 170(f)(11)(A) to furnish a contemporaneous written ac-
14 knowledgment to a donor which knowingly furnishes a
15 false or fraudulent acknowledgment, or which knowingly
16 fails to furnish such acknowledgment in the manner, at
17 the time, and showing the information required under sec-
18 tion 170(f)(11), or regulations prescribed thereunder,
19 shall for each such act, or for each such failure, be subject
20 to a penalty equal to—

21 “(1) in the case of an acknowledgment with re-
22 spect to a qualified vehicle to which section
23 170(f)(11)(A)(ii) applies, the greater of the value of
24 the tax benefit to the donor or the gross proceeds
25 from the sale of such vehicle, and

1 “(2) in the case of an acknowledgment with re-
2 spect to any other qualified vehicle to which section
3 170(f)(11) applies, the greater of the value of the
4 tax benefit to the donor or \$5,000.”.

5 (2) CONFORMING AMENDMENT.—The table of
6 sections for part I of subchapter B of chapter 68 is
7 amended by adding at the end the following new
8 item:

 “Sec. 6717. Fraudulent acknowledgments with respect to dona-
 tions of motor vehicles, boats, and airplanes.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to contributions after June 30,
11 2004.

12 **SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO**
13 **LIST OF TAXABLE VACCINES.**

14 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
15 able vaccine) is amended adding at the end the following
16 new subparagraph:

17 “(M) Any trivalent vaccine against influ-
18 enza.”.

19 (b) CONFORMING AMENDMENT.—Section
20 9510(c)(1)(A) is amended by striking “October 18, 2000”
21 and inserting “the date of the enactment of the Jumpstart
22 Our Business Strength (JOBS) Act”.

23 (b) EFFECTIVE DATE.—

1 (1) SALES, ETC.—The amendment made by this
2 section shall apply to sales and uses on or after the
3 later of—

4 (A) the first day of the first month which
5 begins more than 4 weeks after the date of the
6 enactment of this Act, or

7 (B) the date on which the Secretary of
8 Health and Human Services lists any vaccine
9 against influenza for purposes of compensation
10 for any vaccine-related injury or death through
11 the Vaccine Injury Compensation Trust Fund.

12 (2) DELIVERIES.—For purposes of paragraph
13 (1) and section 4131 of the Internal Revenue Code
14 of 1986, in the case of sales on or before the effec-
15 tive date described in such paragraph for which de-
16 livery is made after such date, the delivery date shall
17 be considered the sale date.

18 **SEC. 733. TREATMENT OF CONTINGENT PAYMENT CON-**

19 **VERTIBLE DEBT INSTRUMENTS.**

20 (a) IN GENERAL.—Section 1275(d) (relating to regu-
21 lation authority) is amended—

22 (1) by striking “The Secretary” and inserting
23 the following:

24 “(1) IN GENERAL.—The Secretary”, and

1 (2) by adding at the end the following new
2 paragraph:

3 “(2) TREATMENT OF CONTINGENT PAYMENT
4 CONVERTIBLE DEBT.—

5 “(A) IN GENERAL.—In the case of a debt
6 instrument which—

7 “(i) is convertible into stock of the
8 issuing corporation, or in stock or debt of
9 a related party (within the meaning of sec-
10 tion 267(b) or 707(b)(1), or into cash or
11 other property in an amount equal to the
12 approximate value of such stock or debt,
13 and

14 “(ii) provides for contingent pay-
15 ments,

16 any regulations which require original issue dis-
17 count to be determined by reference to the com-
18 parable yield of a noncontingent fixed rate debt
19 instrument shall be applied as requiring that
20 such comparable yield be determined by ref-
21 erence to a noncontingent fixed rate debt in-
22 strument which is convertible into stock.

23 “(B) SPECIAL RULE.—For purposes of
24 subparagraph (A), the comparable yield shall be
25 determined without taking into account the

1 yield resulting from the conversion of a debt in-
2 strument into stock.”.

3 (b) CROSS REFERENCE.—Section 163(e)(6) (relating
4 to cross references) is amended by adding at the end the
5 following:

6 “For the treatment of contingent payment con-
7 vertible debt, see section 175(d)(2).”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to debt instruments issued after
10 the date of the enactment of this Act.

11 **SEC. 734. MODIFICATION OF CONTINUING LEVY ON PAY-**
12 **MENTS TO FEDERAL VENDERS.**

13 (a) IN GENERAL.—Section 6331(h) (relating to con-
14 tinuing levy on certain payments) is amended by adding
15 at the end the following new paragraph:

16 “(3) INCREASE IN LEVY FOR CERTAIN PAY-
17 MENTS.—Paragraph (1) shall be applied by sub-
18 stituting ‘100 percent’ for ‘15 percent’ in the case
19 of any specified payment due to a vendor of goods
20 or services sold or leased to the Federal Govern-
21 ment.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the date of the enactment
24 of this Act.